No. [redacted]245

IN THE SUPREME COURT OF THE UNITED STATES

THE STATE OF MINNESOTA,

Petitioner.

vs.

THE FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

BRIEF FOR RESPONDENT IN RESISTANCE TO PETITION FOR WRIT OF CERTIORARI.

THOMAS D. O'BRIEN,
ALEXANDER E. HORN,
EDWARD S. STRINGER,
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STATEMENT.

The Supreme Court of Minnesota determined as a fact that moneyed capital to a material and substantial amount in the hands of individual citizens of Minnesota came into competition with shares of national banks and that the statutes of Minnesota imposing a higher tax upon such bank shares than that imposed upon such moneyed capital was repugnant to Section 5219, U. S. Rev. St. It therefore denounced its own law.

It is this finding of fact, of competition, which the State desires this Court to Review.

The State sought judgments against the Bank for the personal property tax assessed against the shareholders for the years 1921-1922. When originally submitted to the trial court, findings favorable to the State were made, and judgment ordered in its favor. A new trial was directed by the Supreme Court (*State vs. First National Bank*, 204 N. W. 874.) The actions were then re-submitted upon the original record, when findings were made in accordance with the conclusions of the Supreme Court and judgment was denied the State.

The answers interposed by the Bank attacked the laws of Minnesota in several particulars, but upon this petition there is for consideration only those providing respectively for the taxation of money and credits and of shares of national banks.

(A) Money and Credits.

Money and Credits were defined by Section 798 Revised Laws, 1905, Section 1975 General Statutes 1913, as follows:

> "1. 'Money' or 'moneys' shall mean gold and silver coin, treasury notes, bank notes and other forms of currency in common use, and every deposit which any person owning the same, or holding in trust and residing in this state, is entitled to withdraw in money on demand.
>
> "2. 'Credits' shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due."

Section 2316, General Statutes 1913, provided:

> "Definition—Tax Rate—'Money' and 'Credits' as

the same are defined in Section 798 Revised Laws of 1905, (1975,) are hereby exempted from taxation other than that imposed by this act, and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof. But nothing in this act shall apply to money or credits belonging to incorporated banks situated in this state, nor to any indebtedness on which tax is paid under Chapter 328, General Laws 1907, (2301-2309.)"

Chapter 328 excepted as above is the law providing for the taxation of real estate mortgages by a registry tax.

(B) National Bank Shares.

National bank shares were taxed under the provisions of Chapter 416 Laws 1921, the first Section of which was:

"Section 1. Assessment of Bank Stock—The shares of stock of every bank in this state organized under the laws of the United States and the moneyed capital of every bank or mortgage loan company organized under the laws of this state, shall be assessed and taxed at forty (40) per cent. of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located."

Construing and applying these statutes, the Supreme Court said:

"(4) In the year 1921 the shares of stock in defendant bank were taxed at the rate of 67 mills on the dollar on forty per centum of their value, equivalent to 26.8 mills on their full value. In the year 1922, they were taxed at the rate of 61.5 mills on forty per cen-

tum of their value, equivalent to 24.6 mills on their full value. Money and credits were taxed in those years at 3 mills on the dollar of their value. The rate of taxation upon the shares of the bank was several times the rate of taxation upon moneyed capital in the hands of individuals, and was clearly a discrimination forbidden by the Federal Statute unless we can say that it does not appear that any substantial part of such moneyed capital was used in competition with national banks."

The aggregate of the money and credits taxed in Minnesota at the 3 mill rate was:

Year	*Entire State.*	*Ramsey County Only.*
1921	$425,745,839	$83,965,839
1922	400,688,948	83,796,840

The aggregate value of national bank shares after deducting real estate was:

Year	*Entire State.*	*Ramsey County Only.*
1921	$60,728,000	$11,133,000
1922	62,601,000	11,816,660

After fully considering the testimony as to the character and use of this moneyed capital, the Supreme Court found as a matter of fact:

"The undisputed and unquestioned facts shown by the record convince us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks, within the meaning of Section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the state to enforce."

State vs. First National Bank, 204 N. W., 874-880. (Record, p. 307.)

Upon the re-submission of the case, the Trial Court, following this conclusion, found:

> "That at the time of the assessment of said taxes for the year 1921 and 1922, a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County consisted of moneyed capital in the hands of individual citizens of said county coming into competition with the business of national banks in said county and with the business of said defendant." (Record, p. 333.)

ARGUMENT.

I.

CERTIORARI WILL NOT BE GRANTED WHEN THE ONLY QUESTION TO BE REVIEWED IS ONE OF FACT.

The findings which this Court is now asked to review are findings of fact and, therefore, the writ asked for will not be granted.

Southern Power Co. vs. North Carolina Public Service Co., 263 U. S. 508.

Upon the trial of these actions, the defendant Bank assumed the burden not only of showing the existence of moneyed capital in the hands of individual citizens and taxed at a lower rate than bank shares, but that such moneyed capital was used and came into competition with national banks.

The petitioner, by a labored effort, seeks to show that only the existence of such capital was shown and that the Supreme Court of Minnesota *assumed* competition from the fact of the existence of moneyed capital of a character which might have brought it into competition.

A reading of the entire opinion delivered by the Court shows that no such restricted meaning can be given it.

We will not follow counsel in a discussion as to the sufficiency of the evidence. This court will not grant a writ bringing up for review only a claim of insufficient evidence. We will content ourselves with showing there was testimony introduced and considered upon both questions, that is—the character of the use of the moneyed capital as shown by the securities invested in by individuals, and second—that such use brought the moneyed capital into competition with national banks.

There was no dispute as to the amount of money and credits returned for taxation in the State, 425 million, and Ramsey County alone, 83 million. These totals included fifteen items, some of which apparently did not come within the class of investments which could be considered as moneyed capital in competition with national banks and we, therefore, segregated the items, showing enormous sums invested by individual citizens in securities of the character which this Court has said normally enter into the business of banking.

We further showed the extent and character of the operation of investment companies, the holdings of stock in those companies by individual citizens of the state, the amount of commercial paper bought and sold by brokers and others in the state, the amount annually loaned upon real estate security, and a careful estimate of the amount so loaned by individuals. There was a great deal of evidence introduced upon these and kindred subjects upon all of which the witnesses were carefully and exhaustively cross-examined.

Having thus shown, without dispute, the existence of moneyed capital in the hands of individuals and invested in securities of the class which normally enter into the business of banking and which, at least, it must be admitted *may* be in competition with national banks, we introduced several witnesses who testified to actual and direct competition between this moneyed capital and that represented by the shares of national banks. The testimony, as to actual competition, was much stronger and much more in detail in the present than that produced in *Merchants National Bank vs. Richmond*, 256 U. S. 635. There only one witness, Mr. M. C. Adams, testified, and very briefly, as to competition, while here several witnesses testified, were cross-examined and the attention of the Trial and Supreme

Courts especially directed to the importance of the subject.

The petitioner sought to overcome this evidence by the testimony of one witness who expressed an opinion on the subject but even he admitted competition to some extent.

It was with reference to this testimony that the Supreme Court of Minnesota said, (Record p. 322):

> "Several witnesses called by defendant testified that in their opinion all the capital employed for the various purposes hereinbefore mentioned, and also for several other purposes not specifically mentioned, comes into competition with the banks, and gave in detail the reasons for their conclusions. The only witness called by plaintiff testified briefly that in his opinion there would be some competition in some of the items among which he included book accounts, but that there would be little or no competition in other items as they did not represent a class of loans or credits in which the banks were dealing.
>
> The undisputed and unquestioned facts shown by the Record convince us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks within the meaning of Section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the State to enforce."

This was an independent finding of the fact of competition and in no way qualified by the previous language of the opinion.

The Minnesota Court, we submit, had previously clearly and correctly interpreted and followed the decision of this

Court in the Richmond case, but, if the language quoted on page 5 of the petition can be said to indicate an erroneous view of that case, it is a sufficient answer to say that the Court did not stop there; it did not rest its decision on the proposition that this Court had held that competition is shown by the character of the investments in themselves but upon the contrary it examined the evidence and found competition as an established fact.

It thus appears that before reaching this conclusion the Supreme Court analyzed not only the character of the securities but their use, the testimony of the various witnesses with reference thereto, and whether or not the particular use of the moneyed capital brought it into competition with national banks, and said that "the undisputed and unquestioned facts shown by the Record convince us" of the existence of the moneyed capital and of its use in competition with national banks. All of this discussion would have been entirely useless if the Court had determined competition from the character of the investments, per se.

It is not necessary to discuss whether competition would be sufficiently shown, by establishing the existence of moneyed capital, invested in securities which normally enter into the business of banking. We feel it probably would, since this court has very carefully segregated the class of investments which may be held to be in competition with national banks, excluding those in railroads, insurance and manufacturing companies, but including personal investments in interest-bearing securities, whether for long or short periods, and also stock in corporations the business of which consists of investments in such securities, thus showing it is the use made of moneyed capital which determines the question of competition.

Mercantile National Bank vs. New York, 121 U. S. 138.

But the respondent did not limit its evidence so as to make such claim necessary. Upon the contrary, as already said, witnesses were called to show actual competition, at least some evidence was introduced by the petitioner in an attempt to overthrow such evidence, so that it was after a full discussion of practical business operations, and after a full consideration of the evidence, that the Supreme Court of Minnesota set aside as unjustified the original finding of no competition, and instead thereof, found actual competition as we have above quoted.

Upon the re-submission of the case, the District Court of Ramsey County found:

> "That at the time of the assessment of said taxes for the years 1921 and 1922, a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County consisted of moneyed capital in the hands of individual citizens of said county *coming into competition with the business of national banks in said county and with the business of said defendant.*" (Record, p. 333.) (Our Italics.)

Competition between the banks and other moneyed capital was thus found from the testimony as an established and independent fact, the securities so invested in by the individual citizens, owners of this moneyed capital, were "such as normally enter into the business of banking." (Merchants National Bank vs. Richmond, supra) and the amounts so invested constituted moneyed capital in the hands of individual citizens of the State which the Court found was used and came into competition with the business of national banks, and were taxed at a rate much lower than that imposed upon national bank shares. This was a complete defense to the tax sought to be imposed and the

Record affords no justification for the claim, advanced in the brief for petitioner, that the finding of competition was "based wholly upon its" (the Supreme Court's) "theory that the decisions of this Court hold that they" (such securities) "are under all circumstances competitive."

We emphasize the Richmond case because the facts upon which this Court based its conclusions in that case, harmonize so fully with those found here, but in truth the opinion in the Richmond case announced no new view of the scope and purpose of the Federal Statute. It was there said, (p. 639):

> "By repeated decisions of this court dealing with the restriction here imposed, it has become established that while the words 'moneyed capital in the hands of individual citizens' do not include shares of stock of corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into direct competition with those banks. They include not only moneys invested in private banking, properly so called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking."

Following this statement, this court reviewed its prior decisions and quoted from the language found in the leading case of *Mercantile National Bank vs. New York,* 121 U. S. 138, as follows:

> "The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount or otherwise, which are from time to time, according to the rules of the business, reduced again to money

and reinvested. *It includes money in the hands of individuals employed in a similar way, invested in loans or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment.*"

II.

THE COMPARISONS MADE BETWEEN THE TAX UPON MONEY AND CREDITS AND UPON THE SHARES OF NATIONAL BANKS HAVE NO BEARING IN THIS CASE.

The claim that the tax laws of Minnesota resulted in no discrimination in fact was disposed of by the Supreme Court of Minnesota as follows (Record, p. 316):

> "5. Plaintiff also insists that the tax on national bank shares is no greater in fact than the tax on credits. The argument advanced in support of this claim is that individuals are taxed at the rate of three mills on the dollar upon the full value of their credits without deducting their liabilities; and that if banks were taxed at the same rate upon their resources without deducting their liabilities, the amount of the tax will be approximately the same as under the present law. Probably true. But the tax is not against the bank but against the shareholders as individuals. They are taxed as individuals upon the full value of the item of property represented by their shares. They are allowed no deduction from such full value on account of their liabilities. In this particular, the statute applies the same rule to them that it applies to those taxed under

the money and credits' act. See *Des Moines National Bank vs. Fairweather,* 263 U. S. 103, 22 S. Ct. 23, 68 L. Ed. 191."

The above statement is so plain and comprehensive that we ask permission to make no further comment upon this phase of the argument of petitioner.

III.

THE FACTS SO FOUND BROUGHT THESE ACTIONS SQUARELY WITHIN THE DECISIONS OF THIS COURT.

In Merchants National Bank vs. Richmond, supra, the rate on National bank shares was $1.75 per $100 and "upon intangible personal property in general, including bonds, notes, and other evidences of indebtedness," 95 cents per $100. In the City of Richmond a tax at the higher rate was imposed on national bank shares of the value of more than $8,000,000, while the lower rate was imposed on "bonds, notes, and other evidences of indebtedness," of the value of $6,250,000.

In Ramsey County, Minnesota, the full value of national bank shares in 1921 was $11,133,000, 40% of which was taxed at the rate of 67 mills on the dollar, resulting in a rate of 26.8 mills on full value, while money and credits amounted to $83,965,839, and were taxed at 3 mills.

In the Richmond case this court, after reciting the respective amounts of property taxed at the different rates, said, (p. 638):

> "It is to be inferred that a substantial part of this aggregate was in the hands of individual taxpayers. The precise amount does not appear. It was also

shown by evidence without dispute that moneyed capital in the hands of individuals invested in bonds, notes, and other evidences of indebtedness, comes into competition with the national banks in the loan market."

And again, p. 641:

"In the present case, there is a clear showing of such competition, relatively material in amount, and it follows that, upon the undisputed facts, the ordinance and statute under which the stock of plaintiff in error was assessed, as construed and applied, exceeded the limitation prescribed by Section 5219 Rev. Stats., and hence that the tax is invalid."

IV.

THE TAXES SO LEVIED IN VIOLATION OF SECTION 5219 WERE NOT VALIDATED BY CHAPTER 110, LAWS OF MINNESOTA FOR 1923, APPROVED MARCH 29, 1923.

Chapter 110 Laws of Minnesota, 1923, apparently attempts to validate the tax assessments involved in this proceeding. The concluding portion of the enactment is:

"And all taxes heretofore paid, levied or assessed under the laws of this state upon shares of national banking associations, or which might or could have been paid, levied or assessed under the provisions of said Section 5219, *as now amended,* are hereby legalized, ratified and confirmed."
(Italics ours.)

It was claimed in the State court that this enactment was authorized by the 1923 amendment to the Federal law,

and that even if the assessment were originally void it may be validated by giving both the Federal and the State statutes retroactive effect. The Supreme Court considered this claim. and disposed of it in accordance with the decision of the Federal District Court in

> *Minnehaha National Bank vs. Anderson,* 2 Fed. (2nd,) 897, (Record p. 324.)

It is quite apparent that the amendment of March 4, 1923, of Section 5219, was not intended to authorize nor consent to the back taxing of shares in national banks except in accordance with the provisions of Section 5219 as previously existing. The following is the language used:

> "The provisions of Section 5219 of the Revised Statutes of the United States as heretofore in force shall not prevent the legalizing, ratifying or confirming by the states of any tax heretofore paid, levied or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said Section."

As stated by petitioner, there were at the time of the enactment of this amendment discussions in several of the states as to the validity of the laws taxing national bank shares, and it is obvious that inasmuch as Congress was considering an amendment which might affect the tax laws of the states, or some of them, it would have been unwise to legislate upon the subject without protecting the assessments in those states in which the laws complied with Section 5219 as it previously existed.

Nor would it have been wise to prevent states in which illegal assessments had been made from back taxing within proper limitations to the extent that Section 5219, as previously existing, undoubtedly authorized.

This is the plain and obvious meaning of the language, and so construed the amendment had no retroactive effect but only preserved the status quo.

It is well settled that no retroactive effect will be given a legislative enactment unless the language used imperatively requires that construction.

Reynolds vs. McArthur, 2 Peters, 417-438.
Sohn vs. Waterson, 17 Wall., 596-598.
U. S. vs. Burr, 159 U. S. 78.
U. S. vs. American Sugar Refining Co., 202 U. S. 563.
Parkinson vs. Brandenburg, 35 Minn. 294.
Oppegaard vs. County of Renville, 110 Minn. 300, 30 Cyc. 1205.

Even if this were not true, Chapter 110, Laws of Minnesota, 1923, would be ineffective, as it amounted to no assessment or levy of a back tax but only an attempted ratification of a void assessment insofar as the same would be valid under Section 5219, *as now amended.*

The pertinent language of the amendment was:

> "*Provided,* that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments *not made in competition with such business,* shall not be deemed moneyed capital within the meaning of this Section."
> (Italics ours.)

The finding of the Minnesota Court is that moneyed capital of a material amount, *was* used in competition with national banks. It seems, therefore, that even under the amendment the moneyed capital so found to exist would

render invalid the tax attempted to be assessed upon shares of national banks.

V.

No public interest requires a review of these actions.

The precise questions involved here are of limited importance even in Minnesota, as the only national banks in the state which failed to pay the tax for 1921 and 1922, were, the petition states, the respondent and two other "small banks," (petition p. 1). The taxes so paid cannot be recovered back, (petition p. 7).

As to taxes assessed for subsequent years, the decision here will not be controlling since both the act of Congress and the statutes of Minnesota have been amended.

1924 Sup. Fed. St. Ann. p. 84,
Ch. 102 Laws of Minn., 1923,
Ch. 304, Laws of Minn., 1925,

Necessarily each case must depend upon the particular statute involved and the exact facts established.

General statements as to the public interest will not be considered.

Furness Withy & Co. vs. Yang-tsze Association, 242 U. S. 430,

Southern Power Co. vs. North Carolina Public Service Co., 263 U. S. 508,

Layne & Bowler Corporation vs. Western Well Works, 261 U. S. 387,

Nor is there any substantial diversity in the decisions of the State courts.

We believe the decision of this Court in the Richmond case has been followed in every state where the taxing statute similar to the one in Minnesota existed, and where the proof established the existence of a substantial amount of competing moneyed capital.

State Bank of Omaha vs. Endres, 109 Neb. 753, 192 N. W. 322.

Central National Bank vs. Sutherland (Neb.) 202 N. W. 428.

Eddy vs. First National Bank, 275 Fed. 550.

Minnehaha National Bank vs. Anderson, 2 Fed. (2nd Ed.) 897.

State ex rel vs. Wallace, 49 N. D. 103, 187 N. W. 728.

The petition gives three cases which, the petitioner claims, are at variance with the rulings of the Minnesota Supreme Court. Those cases are:

First National Bank of Guthrie Center vs. Anderson, 192 N. W. (Iowa) 6,

First National Bank vs. City of Hartford, 203 N. W. (Wis.) 721.

McFarland vs. Georgetown National Bank, 270 S. W. (Ky.) 995.

In each, the conclusions are based either on different taxing statutes or different facts.

The Iowa case, (First National Bank vs. Anderson,) the court held that money invested by banks, *as agents for their own customers,* and for the convenience of its customers or for its own profit, was not competing money. In other words, a bank could not compete with itself.

As to the Wisconsin decision, (First National Bank vs.

City of Hartford,) the Supreme Court of Minnesota said, (Record p. 318):

> "The Wisconsin law differs so radically from the Minnesota law that the questions there presented for solution were not the same as those presented here."

In Kentucky, (McFarland vs. Georgetown National Bank) the taxing statute was different and the bank failed to establish the existence of a substantial amount of competing money.

While it is true that a retroactive effect was given to the act of Congress by the Courts of Wisconsin and Kentucky, that question is a minor one, and does not appear to be relied upon by petitioner.

There is, we submit, no conflict between the decision of the Minnesota Supreme Court and the decisions of the highest courts of other states. But even if such conflict existed, it would not be ground for the writ.

> *Layne & Bowler Corporation vs. Western Well Works,* supra.

It is, therefore, apparent that the decision of the Supreme Court of Minnesota is not of such general or public importance as would justify the granting of the Writ of Certiorari.

VI.

THIS PETITION IS EQUIVALENT TO AN APPLICATION FOR A REARGUMENT OF THE RICHMOND CASE.

It is impossible to distinguish this from the Richmond case and since the Minnesota Court followed the decision

of this Court, the present application is equivalent to asking for a reconsideration of the Richmond case.

Had the doctrine there announced been new or at variance with the prior decisions of this Court, such a request might, in view of the experience and commanding ability of counsel for petitioner, be considered reasonable, but that decision is in complete harmony with the prior holdings of this Court extending back for a period of more than half a century.

We have then a case in which the State Court following and applying the decisions of the Federal Supreme Court found the law and practice of its own State to be in violation of the National Statute and beyond the rightful power of the State. It seems, therefore, the Record presents no Federal question. The petition should be denied.

Respectfully submitted,

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31543

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

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—vs—

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RESPONDENT'S BRIEF

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 245

STATE OF MINNESOTA,

Petitioner,

—vs—

THE FIRST NATIONAL BANK OF ST. PAUL,

Respondent.

RESPONDENT'S BRIEF

STATEMENT

The Respondent, a national bank, resisted proceedings brought to obtain judgments for taxes assessed by the state authorities against respondent's shareholders for the years 1921 and 1922, the defense being that the assessments were invalid, as exceeding the restrictions fixed by the Federal Law, (Sec. 5219, Rev. Sts. U. S.): because (1) the tax on the shares greatly exceeded that imposed on other and competing moneyed capital, (2) the statute authorizing a tax on state banks discriminated against shares of national banks, (3) taxing trust companies upon gross earnings resulted in further discrimination.

At the time the taxes in question were levied Sec. 5219 read:

> "Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the Association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in a city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county, or municipal taxes to the same extent, according to its value as other real property is taxed."

The authority for the levy was Chapter 416, Laws of Minnesota 1921 (Appendix A), the first section of which was:

> "Section 1. ASSESSMENT OF BANK STOCK.—The shares of stock of every bank in this State organized under the laws of the United States, and the moneyed capital of every bank or mortgage loan company organized under the laws of this State shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located."

The tax rate in the district in which respondent is located for 1921 was 67 mills. (Respt's Ex. A). The taxing authorities found the full value of respondent's shares (exclusive of real estate which was directly taxed) to be

$6,093,605.00

40% (Petitioner's Ex. 1—1921)..... 2,437,442.00

Assessment at rate of 67 mills (Petitioner's Ex. 1) 163,308.62

This amount, $163,308.62, is equivalent to a tax upon full value at a rate of 26.8 mills.

In 1922 the rate was 61½ mills (Respt. Ex. B), which resulted as follows:

Full value (exclusive of real estate) $6,528,100.00
40% 2,611,240.00
Assessment at rate of 61½ mills (Petitioner's Ex. 1—1922) 160,591.26

The equivalent to a tax upon full value at a rate of 24.4 mills.

Prior to 1906 the Constitution of Minnesota required all taxes to be equal and the statutes of the State regulating the taxation of personal property including moneyed capital and bank shares fairly complied with that provision. (Secs. 835-842 R. L. 1905, Ch. 60, Laws 1905).

In 1906, however, the Constitution was amended and provided that taxes should "be uniform upon the same class of subjects" (Minn. Const. Art. 9, Sec. 1). Since then classifications have been made which finally resulted in placing all forms of moneyed capital, other than shares in national banks, in classes taxed at rates in most instances amounting to not more than one-ninth of that imposed on such shares and in some classes still less and in others resulting in no tax.

In 1907, mortgages upon real estate and executory contracts for the sale of real estate were exempted from all but a registry tax (Ch. 328, Laws 1907). In 1913 this registry tax was fixed at 15 cents per $100.00 where the mortgage was five years or less, and 25 cents per $100.00 on those for a longer period (Ch. 163, Laws 1913, Sections 2301, 2315 G. S. 1913, (Appendices B and C).

In 1911 a statute was enacted placing an exclusive tax of 3 mills upon money and credits, but excluding incorporated banks from its benefits (Ch. 285, Laws 1911, Sec-

tion 2316, G. S. 1923, Appendix D). The first section of the statute reads:

> "TAXATION OF MONEY AND CREDITS.—Section 1. 'Money' and 'credits' as the same are defined in section 798 'Revised Laws of 1905' are hereby exempted from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof.
>
> "But nothing in this act shall apply to money or credits belonging to incorporated bank situated in this state, nor to any indebtedness on which tax is paid under chapter 328, General Laws of 1907."

Chapter 328, Laws 1907, referred to in the statute just quoted, provided for the registry tax upon mortgages (Appendix B).

Sec. 798, R. L. 1905, Section 1975, G. S. 1913, referred to for the definition of money and credits, provided as follows:

> "1. 'Money' or 'moneys' shall mean gold and silver coin, treasury notes, bank notes and other forms of currency in common use, and every deposit which any person owning the same, or holding in trust and residing in this state, is entitled to withdraw in money on demand.
>
> 2. 'Credits' shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due."

In 1913 there was enacted a statute taxing trust companies upon gross earnings (Ch. 529, Laws 1913, Appendix E). Trust companies receiving deposits are not taxed under this law but are treated as state banks.

This same year, 1913, a general classification of property not already classified was made by (Ch. 483, Laws 1913, Appendix F). By this statute bank shares fell into class 4,

and were required to be assessed at 40% of "full and true" value.

Shares of stock in corporations other than banks went, and still go, entirely untaxed. The terms of Sec. 838, R. L. 1905; Sec. 2015, G. S. 1913, provide for their taxation only in case the value of such shares exceeds the value of all the property of the corporation. (Appendix G). This results in the total exemption from taxation of the shares of financial and investment companies other than banks.

Private banks, brokers and banks without stock pay the 3 mill rate upon money and credits (Sec. 839, R. L. 1905, Sec. 2016, G. S. 1913; (Appendix H). Notes in Tax Manual 1921, Petitioner's Ex. 2, Record p. 381, and Tax Manual 1922, Petitioner's Ex. 3, Record 389). There are no private banks receiving deposits in Minnesota. There are many brokers.

Finally, in 1921, Chapter 416 (Appendix A) was enacted and the gross discrimination against shares in national banks was completed.

When the actions came on for trial in the District Court for Ramsey County the respondent presented abundant evidence of the existence of moneyed capital. The testimony showed the aggregate value of state and national bank shares, the amount of money and credits returned for taxation, a close estimate of the amount annually loaned upon real estate mortgages, the annual amount loaned through brokers upon commercial paper, annual bond sales, the aggregate shares in trust companies and the aggregate of the trusts and accounts held by them, loans to commercial houses by their employees, and the reports to the Federal Reserve bank of the transactions of financial and investment companies.

It was shown by respondent that this moneyed capital came into competition with national banks. The witnesses were thoroughly cross examined. Only one witness as to this

was called by the petitioner who admitted that some of the moneyed capital shown came into such competition. Thus, while its existence was not disputed, whether or not a material amount of such moneyed capital came into competition with the banks was treated as a question of fact to be determined from the evidence.

At the first trial the District Court found against the respondent upon that question, a motion to amend the findings and for a new trial was denied, and upon appeal the Supreme Court of Minnesota reversed the order.

After reviewing the evidence and authorities, the Supreme Court said (Record, p. 322):

> "Several witnesses called by defendant testified that in their opinion all the capital employed for the various purposes hereinbefore mentioned, and also for several other purposes not specifically mentioned, comes into competition with the banks, and gave in detail the reasons for their conclusions. The only witness called by plaintiff testified briefly that in his opinion there would be some competition in some of the items among which he included book accounts, but that there would be little or no competition in other tiems as they did not represent a class of loans or credits in which the banks were dealing.
>
> "The undisputed and unquestioned facts shown by the record convince us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks within the meaning of section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the State to enforce."

Respondent's claim that investments in mortgages should be taken into account was disposed of as follows: (R., p. 321).

> "Defendant also insists that capital invested in real estate mortgages, aggregating many millions of

dollars, must be considered as competing capital for the reason that since the act of December 23, 1913, (38 Stat. 273), national banks have been authorized to invest a part of their funds in such mortgages, and the national banks of Minnesota had $19,000,000 invested therein in 1921 and $25,000,000 in 1922. Failure to tax mortgages at the same rate as bank shares was not a forbidden discrimination prior to this act. Hepburn vs. School Directors, 90 U. S., 480, 23 L. Ed., 112; Adams vs. Nashville, 96 U. S., 19, 24 L. Ed., 369; Merchants National Bank vs. Mayor, etc., 121 U. S., 138, 30 L. Ed., 895. Whether this act operated to change the former rule has not been passed upon by the United States Supreme Court so far as we are advised. Other decisions are conflicting. It is not necessary to determine the question here."

Respondent's contention that Chapter 416, Laws 1921, created discrimination as a matter of law between state banks and shares in national banks was denied; the Court saying: (R., pp. 321-2).

"Defendant also insists that, although chapter 416 provides the same method for determining the value of the shares of national banks and the value of the money capital of State Banks, it discriminates in favor of State Banks. This claim is based on the fact that in the case of State Banks, the tax is against the bank, not against the shareholders, and the bank is permitted to deduct its tax exempt securities from the value of its property in fixing the amount subject to taxation, while in the case of national banks the tax is against the shareholders, not against the bank, and tax-exempt securities are not deducted in fixing the value of such shares. We think that the method adopted is permissible under the doctrine of People vs. Commissioners of Taxes, 71 U. S. (4 Wall) 244, 18 L. Ed., 344; Mercantile Nat. Bank vs. Mayor, etc., 121 U. S., 138, 30 L. Ed., 895; and Des Moines Nat. Bank vs. Fairweather, 263 U. S. 103, 68 L. Ed., 191."

Nothing was said in the opinion with reference to our

claim that taxing trust companies upon gross earnings resulted in discrimination.

This brought the actions back to the District Court for a new trial, where they were submitted upon the record already made and that court made new findings, the eighth of which was (R., p. 333):

VIII.

> "That at the time of the assessment of said taxes for the years 1921 and 1922, a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County consisted of moneyed capital in the hands of individual citizens of said county, coming into competition with the business of national banks in said county, and with the business of said defendant."

Judgment was entered in respondent's favor and affirmed upon appeal.

SUMMARY OF ARGUMENT

I.

The findings of the Court (1) as to the existence of moneyed capital in the hands of individual citizens of the state, (2) a material portion of which came into competition with national banks and (3) taxed at a lower rate than national bank shares, were fully supported by the evidence and are conclusive.

II.

There was erroneously excluded from this moneyed capital, debts secured by mortgages upon real estate, the inclusion of which while not changing the result would have materially increased the amount of moneyed capital to be taken into consideration.

III.

Upon the facts so found the inevitable conclusion was that the attempted levy of the tax was beyond the power of the State as restricted by Section 5219 Rev. Stats. U. S., and therefore invalid.

IV.

Chapter 529, Laws of Minnesota 1913 (Appendix G) taxing trust companies upon gross earnings, created an unlawful discrimination between the moneyed capital invested in shares of trust companies and those of national banks.

V.

Chapter 416, Laws of Minnesota 1921 (Appendix A) providing for the taxation of national bank shares and the moneyed capital of banks, organized under the laws of Minnesota, created discrimination, inasmuch as under that method state banks had the privilege of deducting from capital and surplus such tax-exempt securities as each held, while the shareholders in national banks had no such right. Therefore, there was no valid statute of Minnesota authorizing the levy of a tax upon shares in national banks.

ARGUMENT

I.

A STATE HAS NO POWER TO TAX NATIONAL BANKS NOR THE SHARES THEREOF EXCEPT AS AFFIRMATIVELY PERMITTED BY CONGRESS.

National banks are instrumentalities and agencies of the United States and a state is without power to assess any tax, either direct or indirect, upon their capital shares or property except by permissive legislation of Congress.

Owensboro National Bank vs. Owensboro, 173 *U. S.* 664 (668).

There was no grant of power to tax the shares or property in national banks in the National Banking Act of February 25, 1863.

12 *Stats. Ch.* 68, *p.* 665.

Owensboro National Bank vs. Owensboro, supra.

The first grant of power is found in Act of June 3, 1864, (13 U. S. Stats. Ch. 106, p. 99) which provided (Sec. 41, p. 112):

> "Provided that nothing in this Act shall be construed to prevent all the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under state authority at the place where such bank is located, and not elsewhere, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state; *provided further, that the tax so imposed under the laws of any state upon the shares of any of the associations authorized by this Act shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the state where such association is located;* provided, also, that nothing in this

Act shall exempt the real estate of such associations from either state, county or municipal taxes to the same extent, according to its value, as other real estate is taxed." (Italics ours).

This Act, omitting the part in italics, was substantially re-enacted in Act of February 10, 1868, 15 Stats. Ch. 7, p. 34, which provides:

> ***"And the legislature of each state may determine and direct the manner and place of taxing all the shares of national banks located within such state, subject to the restriction that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and provided always that the shares of any national banks owned by non-residents of any state shall be taxed in the city or town where the bank is located and not elsewhere."

This Act of Congress so amended became Section 5219 of the Revised Statutes, which read:

> "Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the state within which the association is located, but the Legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to the two restrictions that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents in any state shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county or municipal tax, to the same extent according to its value as other real property is taxed."

Section 5219 remained unamended until the Act of March 4th, 1923, 42 Stats. Ch. 267, p. 1499, when the states

were given the power to tax the shares, or dividends or income of a national bank.

II.

THE EVIDENCE ESTABLISHED THE EXISTENCE OF MONEYED CAPITAL OTHER THAN SHARES IN NATIONAL BANKS.

While in the broadest sense moneyed capital in the hands of individuals might mean every investment by an individual in a business enterprise, this Court, in construing the Act of Congress has uniformly held the language as there used to mean investments made or brought into competition with national banks or the business of banking. This excludes from consideration investments in manufacturing and mercantile companies as well as some others, but does include money—,

> "***** invested in shares of state banks or in private banking, and also where it is employed, substantially as in the loan and investment features of banking, in making investments by way of loan, discount or otherwise, in notes, bonds or other securities with a view to sale or repayment and reinvestment."
>
> *First National Bank of Guthrie Center vs. Anderson*, 269 *U. S.* 341, 348.

A previous definition by this Court seems identical:

> "By repeated decisions of this court, dealing with the restriction here imposed, it has become established that, while the words 'moneyed capital in the hands of individual citizens' do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into direct competition with those banks. They include not only moneys invested in private banking so called, but investments of individuals in securities that represent money at interest and other evidences of in-

debtedness such as normally enter into the business of banking."

Merchants Nat'l Bank vs. Richmond, 256 *U. S.* 635-639.

Our inquiry therefore is not as to the occupation of the individual owner, but as to use made of his capital. If we find a material amount of moneyed capital "employed substantially as in the loan and investment features of banking," or if it is invested in competition with banks, "in securities that represent money at interest and other evidences of indebtedness that normally enter into the business of banking," then the State, as a condition precedent to its taxation of national bank shares, must put such other moneyed capital upon a parity with them.

As condition for the years 1921 and 1922 were substantially similar, we will generally refer to those in 1921.

We first call attention to the erroneous view which the tax authorities of Minnesota held with reference to the restrictions imposed by Sec. 5219.

At the trial of these actions, the state produced a manual of instructions issued by the Tax Commission, of which certain pages were introduced in evidence as State's Ex. 2 and 3 and will be found in the Record at pages 375-389.

Most of these instructions were in the form of question and answer, and at pages 376 and 377 of the record there is the following:

"Q. Can the State tax shares of stock in a national bank located within the State?"

"A. Yes, subject to the Federal Statutes which provide that such tax shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the State, and that the tax must be assessed only where the national bank is located."

The same question and answer were contained in the manual issued for 1922 (R., p. 384).

The existence of moneyed capital was undisputed. The

very extensive evidence of its competing character was also practically uncontradicted by any witness or tesimony. The *claim* that no competing moneyed capital had been shown rested upon the adroit arguments and assertions of counsel for petitioner. If these created a question of fact, it was determined adversely to the petitioner by the Minnesota Court in construing the laws of Minnesota.

A huge amount of moneyed capital was shown to exist in the State and County where respondent bank is located.

Money and Credits were returned for the year 1921 to the amount of $425,745,839.00 for the entire state, of which $83,965,268.00 was in Ramsey County (R., p. 151).

By computing the registry tax paid on mortgages, Mr. Bacon, Secretary of the Tax Commission, estimated the annual mortgage loans to be from $184,560,000 to $307,600,000. (R., p. 153), and as such loans are nearly always for long terms, an estimate of existing loans to the amount of one billion is not extravagant.

Annual bond sales in the state were estimated at fifty million. (C. O. Kalman, R., pp. 121, 123). Bonds ordinarily run for a much longer period than do mortgages, so the total investment in bonds was many times fifty million.

Investment companies in the cities of St. Paul and Minneapolis reported to the Federal Reserve Bank of Minneapolis sales of securities in 1921 to the amount of $81,333,692. (Respt's Ex. Q).

Commercial paper annually purchased by note brokers and persons other than banks amounted to one hundred million. (Lindeke, p. 124; Sommers, p. 127; Shepard, p. 131; McLaren, p. 136).

Trust estates and the like exclusive of real estate held by three trust companies amounted to more than fifty million (Stevenson, p. 26; Smith, p. 37; Davis, pp. 65, 66; Fellows, p. 140).

The value of shares of stock in all trust companies and

some investment companies found by including surplus, etc., but deducting real estate was more than thirteen million (Respt's Exs. C and J; Lillibridge, p. 191; Oehler, p. 80). Cattle loan paper sold in Minnesota in 1921 amounted to $5,276,090.00 (Respt's Ex. R). Loans made to commercial houses, customers of respondent bank, by their employees or officials, one and a half million (Brown, R., p. 204; Sommers, R., p. 126).

The value of shares in state banks and trust companies receiving deposits exclusive of real estate was $43,681,688.40 (Respondent's Ex. C).

The value of shares in national banks found in the same manner was $60,671,000.00 (Respondent's Ex. M).

In this list, amounting to more than two billion dollars, there are some duplications and also tax-exempt securities are included, and we submit the following further analysis:

Money and Credits were returned as $425,745,839, this should cover commercial paper purchased by note brokers, trust estates, cattle loans, loans to commercial houses and some bonds, but not government, state or municipal securities, shares of capital stock of Minnesota corporations, bonds of corporations paying taxes in Minnesota nor mortgages.

Money and Credits are, by the tax authorities, divided into fifteen items (Bacon, R., p. 151; Respt's Ex. K). In 1918 the Tax Commission made a segregation of the items and the percentage which each bore to the whole; this is applicable to the year 1921 (Bacon, R., p. 152; Respt's Exhibit H.) Taking the total amount returned in the state for 1921—$425,745,839—and dividing it by the percentages given in Respt's Exhibit H, we have the following:

1. Money subject to check and on deposit in banks, trust companies or similar financial institutions wherever situated, 18.18% $77,400,593.00

2. Money on deposit in banks, trust companies, postal and other savings banks, or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit, cashier's checks or similar instruments, 12.65% ... 53,856,848.00

3. Money other than as above specified, on hand or under control of the owner or his agent, whether the same is held in this state or elsewhere, 1.64% ... 6,982,231.00

4. Promissory notes, bills of exchange, due bills, cream checks and similar evidences of indebtedness, 10.13% ... 43,128,053.00

5. Bonds, except United States Bonds and Bonds issued by the State of Minnesota or any Municipality thereof, and such as are secured by real estate mortgages recorded in this state, 4.51% .. 19,201,137.00

6. Real estate mortgages upon lands situate outside of this state and amount secured thereby, 3.87% 16,476,363.00

7. Real estate mortgages on lands in this state which have not been recorded and the amount secured thereby, 0.68% .. 2,895,071.00

8. Chattel mortgages upon personal property in this state or elsewhere, and the amount secured thereby, 0.86% 3,661,414.00

9. Judgments in this state or elsewhere, 0.21% 894,066.00

10. Book accounts, 34.34% 146,201,121.00

11. Contracts for sale of real estate outside of this state, 0.63% 2,682,198.00

12. Contracts for sale of real estate in this state which have not been recorded, 1.53% 6,513,911.00

13. Annuities, royalties and all sums of money receivable at stated periods, 0.15% 638,618.00

14. All claims and demands for money or other valuable thing not above enumerated, 4.16% 17,711,026.00

15. Shares of stock in corporations the property of which is not assessed or taxed in this state, 6.01% 25,587,324.00

Segregations were also made for Ramsey County, not only as to the items (Respt's Ex. I) but also each item was apportioned between individuals and corporations (Respondent's Ex. K), which we feel it is unnecessary to more than refer to.

While money and credits should thus include taxable bonds, commercial paper, etc., we have called attention to the volume of transactions in those securities because no matter how small they may appear upon the tax list, the extent of the actual dealings in those securities becomes of the highest importance upon the question of competition.

Taking money and credits, $425,745,839.00, as including taxable bonds, commercial paper, property of investment companies, trust estates, cattle loans and private loans to commercial houses, we have the following tabulation of Moneyed Capital in Minnesota for the year 1921: In this tabulation we have included no amount for nontaxable bonds: those consist of Government, Municipal and bonds secured by mortgage on real estate in Minnesota. The last should be included in the amount given for mortgages and while the amount of such bonds outstanding must be very great (Kalman, R., p. 123) we have in order to avoid duplication omitted any amount therefor.

TABLE SHOWING MONEYED CAPITAL IN MINNESOTA FOR THE YEAR 1921—TAX RATE AND TOTAL TAX

Description	Amount	Tax Rate Per Dollar	Total Tax
Money and Credits	$ 425,745,839.00	3 mills	$1,277,237 @ 3 mills
Mortgages on Real Estate	1,000,000,000.00	1½ to 2½ mills	2,500,000 @ 2½ mills
Shares State Banks and Trust Co's. Receiving Deposits	43,681,688.40	untaxed as such	
[1]Shares Other Trust and Investment Companies	2,485,000.00	untaxed as such	
[2]Shares of National Banks	60,671,000.00	67 mills on 40%=	1,626,250.80 @ 26.8 mills on full value
Non-Taxable Bonds	Many millions but amount not determined		

[1]This is believed to be a very inadequate showing as to Investment Companies

[2]Using the tax rate in Ramsey County

Nearly all of this moneyed capital was represented by securities which normally enter into the business of banking. Since the establishment of the Federal Reserve Banks, national banks may, and do, lend money on real estate mortgages. They, of course, deal in commercial paper, buy and sell bonds, and take and hold as security for loans other bonds and stocks. Some national banks maintain bond departments (R., Smith, p. 46), and also, since the Federal Reserve law, may be authorized to act as trustee, executor, etc. The testimony showed to some extent the dealing in those securities by banks in Minnesota during the year 1921, and we give a tabulation of mortgages, bonds and stocks held by banks—the table, of course, does not include general loans and discounts, nor the collateral held with such loans.

TABLE SHOWING INVESTMENTS IN MORTGAGES, BONDS AND STOCKS BY NATIONAL AND STATE BANKS IN MINNESOTA COMPARED WITH TOTAL VALUE OF SHARES IN EACH CLASS OF BANKS

Description of Security	National Banks		State Banks and Trust Companies	
Mortgages	$19,713,000.00	Respt's Ex. N.	Not Given	
U. S. Government	41,190,000.00	Respt's Ex. M.	$13,866,927.91	Respt's Ex. C.
Other Bonds, Stocks and Securities	33,894,000.00	Respt's Ex. M.	70,372,789.16[1]	Respt's Ex. C.
TOTALS	$94,797,000.00		$84,239,717.07	
Value of Shares Excluding Real Estate	$60,671,000.00	Respt's Ex. M.	$43,681,688.00[2]	Respt's Ex. C.
Amount of Securities in Excess of Value of Shares	$34,126,000.00		$40,558,029.07	

[1]Undoubtedly includes mortgages

[2]Two stock savings banks included

It appears from the foregoing tabulation that the holdings of Minnesota banks, both state and national, in mortgages, bonds and stocks, exceeded, in a very substantial amount, the aggregate value of the shares in each class of banks.

When a mortgage is owned by an individual or partnership, obviously the registry tax is in full. When owned by an investment corporation, its shares not being taxed, the only amount paid is the registry tax. When we come to national bank shares, we find the registry tax must be paid as in other cases, and, in addition, the mortgage may not be left out of the assets to be considered in determining the value of the shares so an additional tax and at a rate about twelve times as great, is exacted from the shareholders on account of the mortgage.

This discrimination is still more obvious in the case of tax exempt bonds, particularly United States bonds, and will always exist where the tax in one class of financial corporations is assessed directly upon the property and in the other upon the shares of stock, and the greater the spread between the rate upon the shares and that upon items of property directly assessed, the greater will be the discrimination.

The discrimination is between individual citizens, shareholders in the respective corporations when the securities are owned by corporations, and between the holders of shares in national banks and individual owners of such securities untaxed in their hands.

Mortgages were shown to have been held by investment companies engaged in the business of dealing in such securities, and also by individuals who, at least to the extent of their investments, were similarly engaged.

Respondent's Exhibit Q shows that eighteen investment houses located in St. Paul and Minneapolis reported sales

of mortgages in 1921, amounting to $14,036,069.00. Eleven of those so reporting were Minnesota corporations (Lillibridge, R., p. 186). The Exhibit does not include all investment houses, only those reporting (Lillibridge, Record, p. 190.) It included some trust companies, but no banks (Lillibridge, Record, p. 192.)

Mr. Soucheray, of the St. Paul Abstract Company, after an examination of the records, found that in the year 1921 mortgages amounting to $9,889,047 had been recorded in Ramsey county alone, of which $6,351,105 were owned by individual residents of that county (Soucheray, R., p. 147).

Much other evidence to the same general effect, but confined to the dealings of trust companies was given by Messrs. Stevenson (R., pp. 19-36); Smith (R., pp. 36-47); Mulcahy (R., pp. 56-63); Davis (R., pp. 63-74); Armstrong (R., pp. 93-108); Fellows (R., pp. 138-144).

These mortgages were all taken and dealt in as an important part of the investment business; the shareholders of the corporations devoted the price of their shares to its maintenance, the customer used his moneyed capital for the same purpose, for without the customers, the business could not have been carried on, and thus the individual shareholder, the individual purchaser, and the investment corporation all co-operated in carrying on the business of investing moneyed capital in securities which normally enter into the business of banking.

What we have said as to mortgages applies equally to bonds with the difference only that taxable bonds are required to be listed as money and credits, taking the 3 mill tax.

There were in the state in 1921, 26 trust companies receiving deposits with capital stock of $7,647,907.42 (Respt's Ex. C) and fifteen with aggregate capital stock of $2,135,000.00, which paid taxes upon gross earnings (Respondent's Exhibit J).

The shares of these companies were largely held by citizens of Minnesota (Davis, R., p. 74).

Three trust companies were shown to have in their custody and control in trust estates and the like exclusive of real estate something more than fifty million, of which the greater part must have been invested in securities such as we have been considering. (R., Stevenson, p. 27; Smith, p. 38, 39). Ninety per cent of these trusts were held for individual citizens (R., pp. 27, 38, 39).

Stock held by individual citizens in financial corporations is beyond all question moneyed capital within the meaning of Sec. 5219, Rev. St. U. S.

The existence of such moneyed capital was shown.

Mr. Lillibridge testified that of the investment houses reporting to the Federal Reserve Bank of Minneapolis (Respondent's Ex. Q) eleven were Minnesota corporations (R., pp. 185, 186). This may have included some trust companies (p. 192).

We realize a much more complete showing could have been made as to corporate stock in financial companies, but a substantial and material amount of that character of moneyed capital in the hands of individual citizens of Minnesota was shown by uncontradicted evidence (R., Stevenson, pp. 19, 27; Smith, p. 36; Davis, p. 74; Oehler, p. 80; Lillibridge, p. 193, and as to shares in state banks, Lundin, pp. 77, 78).

III.

IT WAS ESTABLISHED BY THE EVIDENCE THAT THE MONEYED CAPITAL SO SHOWN TO EXIST CAME INTO COMPETITION WITH NATIONAL BANKS.

That the moneyed capital shown to exist came into competition with national banks was established by overwhelming and practically undisputed oral evidence.

Mr. Cyrus P. Brown, President of respondent bank, testified in detail as to such competition. His experience as a banker, thirty-five years in Rhode Island and Minnesota, (R., pp. 195-6) fully qualified him as a witness of unusual value.

Mr. Brown's testimony appears in the record upon pages 195-232 and again at pages 261-263. After a general description of banking activities, he was questioned as to competition between different forms of moneyed capital, and we quote as follows from his testimony, page 198:

> "A. The national banks are, you might say, substantial reservoirs of credit. Almost every individual is, to a greater or less degree, a smaller reservoir of credit. If he loans money on a mortgage or on a bond, to his brother or his cousin or his aunt, or to anyone else, that is in competition with us, because it takes from us a possible customer. We often have cases where a man will check money out and loan a relative. We happened to know of the transaction. So it acts in both ways. It takes money out of our bank, and, of course, in the aggregate, that is a very large amount."

(Page 199):

> "A. Why, any money invested in corporate securities or any other kind of securities comes in competition with anyone who loans money on those securities or on other securities—can't help doing so.
>
> "Q. And that applies to all of the securities held and dealt in by national banks?
>
> "A. Yes.
>
> "Q. Real estate mortgages, municipal bonds?
>
> "A. Yes, anything that takes money.
>
> "Q. What is that?
>
> "A. Anything that takes money, because that is the commodity we sell. The commodity furnished by anybody else is in competition with us."

(Page 201):

> "Q. So that the more available money there is in

any community, in any state or in any country for investment for loan and interest, affects the rates?

"A. It does.

"Q. And state whether or not in that way all of the money of any community or state or country necessarily is in competition.

"A. It is." * * * * *

"Q. Now, Mr. Brown, I would be very glad if you would go on and explain this in your own way any further.

"A. Why, as far as competition is concerned, the banking business is one business in the world that almost anyone can compete with without a sign, without even an office. If a man has an apple stand on the street, he has to get his location, get his merchandise and do business, but a man can compete with a bank with simply some money in his pocket. If he makes a loan to his brother, to his cousin, to his aunt, to his father, that loan is in competition with the bank because it takes from the bank the possibility of loaning its own money to that person.

"Q. There is one other form of competition that I would like to call your attention to and get your judgment upon. Is it true that the investment of money by individuals or firms or corporations in securities such as real estate mortgages, municipal bonds, corporation bonds, United States government bonds, and warrants, reduces the amount of deposit in the banks?

"A. It certainly does. In other words, if people don't put it in an investment they would keep it on deposit in the bank. People who invest money very rarely keep money elsewhere than on deposit in the bank. They don't keep it in their house or in their cellar or places like that. Take a man who is intelligent enough to invest his money, he puts it in a bank. When he makes an investment he draws it out of the bank."

(Page 204):

"Q. Now, when you speak of the competition of money in loanable funds generally of the national

banks, you don't particularly speak of a competition which you can directly and tangibly feel at your bank, do you?

"A. Oh, yes, indeed, we can feel it. Of course, we can feel it.

"Q. That is, you feel it in respect to the—

"A. We know there is a large volume of money loaned to our customers that we ourselves should loan. Just as an instance of that—just before coming here the other day, I took at random eleven statements of borrowers of ours and I found nearly a million and a half dollars loaned to them by the officials or employes of companies. There is a case where we would directly feel it. That is money that we would naturally loan ourselves, but it is loaned to them by the individual."

(Page 208):

"Q. How is it that a broker can loan money to one of your customers and sell that paper to you, after taking off his discount, for—

"A. I am very glad to answer that, because you asked two or three witnesses yesterday, and they apparently didn't know. The reason for that is, that a broker in selling the paper does not disclose—In the first place, the man that holds it—it may be an individual, it may be a corporation. When he sells that paper he sells it with no agreement to renew. There is absolutely no responsibility. The man knows when he takes that piece of paper that it will be paid when it is due. He gets it without any obligation on his part. Now, when we loan a customer, why that money goes with a call. We know that we have got to take and renew that man's note if he can't pay it at maturity. The broker when he sells a note—the broker has an advantage over us. When he sells that paper he sells that paper with absolutely no condition to it, it has to be paid when it matures. The man knows when he has a note maturing. It isn't so with a jobbing house, it has to pay that note or fail. While with us, we know that if we loan a local jobber here some money and it

isn't convenient for him to pay when it becomes due, we have to renew that note whether we want to or not. In other words, our customers have a call on us for so much money, and that calls is—Mr. Sommers, I think it was, testified yesterday that his note broker wanted to know if he had any paper that he bought that he had lines of credit open with the bank so he would be sure to have to pay it when it was due. That is where the competition is very difficult for us. In other words, these people have a call on us for so much money and when we wish to loan them the money they won't take it; when we don't want to loan it, they come in and ask for it."

(Page 212):

"Q. Now, in what way do you at your bank feel the competition of real estate loans?

"A. Well, anything that takes money is competitive with us, who are loaners of money. In other words, a man if he can't borrow on a real estate loan, why he would come and borrow at the bank on an endorsement, have to borrow his money some way or put up security of some kind, put up the real estate loan, for that matter, borrow of us on real estate."

(Page 218):

"Q. They buy bonds with a view of selling them at a profit?

"A. Well, we all do. If we couldn't sell at a profit we wouldn't buy them. If we didn't think we could sell them at a profit we wouldn't buy them.

"Q. Insofar as your statement as introduced here indicates ownership of bonds—take government bonds on May 1, 1921, you held government bonds, in round figures, three and a half million. Were these bonds held by you with a view to sale?

"A. Yes, we held them, I think, about three and a half million. In 1922 we had eleven or twelve million, I think. We later went up. I think we held at one time over twenty million dollars of government bonds and securities. Today we hold a little over nine

million dollars. We employ our money that way and sell them if we think the market is—

"Q. Is that the primary purpose of it?

"A. The primary purpose is to make money.

"Q. I mean make money by selling at a profit.

"A. Make money by selling at a profit and getting our interest—two things."

(Page 223):

"Q. Do you consider that these investment houses in selling the bonds of public service corporations come in competition with national banks?

"A. Come in competition in a broad way, that they take money that otherwise would be loaned by us.

"Q. Only in that broad way?

"A. Well, we buy public service bonds; national banks buy public service bonds; if they sell to somebody else, why they are in competition.

"Q. That would be true of railroad bonds, investment houses dealing in any way by buying or selling railroad bonds, would, in a broad way, come in competition with national banks?

"A. Yes."

Beginning on page 226 will be found Mr. Brown's testimony where he was cross-examined with reference to each of the fifteen items comprising listed money and credits to which we respectfully call the court's attention.

Mr. Smith, vice president and trust officer of Minnesota Loan & Trust Company, testified as to competition (R., pp. 38-47).

Mr. Mulcahy described the competition as to mortgages (R., p. 61).

Mr. Davis testified as to various investments of trust companies (R., pp. 63-74).

Mr. Armstrong, vice president and trust officer of Merchants Trust and Savings Bank, said (p. 105):

"Q. So, eliminating investments in industrial occupations, and confining your statement to investments

in either shares of stock or purchase of bonds or mortgages where the return is to be interest upon the money, is not all that money in competition?

"A. Always.

"Q. Necessarily?

"A. It must be."

Mr. Fellows, vice president of Capital Trust and Savings bank, said (p. 143):

"Q. Is it not true that all money that is loaned at interest in a community necessarily competes with all other money that is also loaned at interest?

"A. It does, in a broad way, yes."

Mr. Simons, President of Twin Cities National Bank, said (p. 176):

"Q. Will you state with what money investments, moneyed capital and business transactions that a national bank comes into competition in this state?

"A. Generally speaking, it comes into competition with every other person and corporation that is in the market to loan money within the limits that we are permitted to lend by law. I mean by that we can't take mortgage loans for longer than five years nor city loans for longer than one.

"Q. What do you mean by every person who lends money?

"A. Most everybody that is in the market to lend money wants to lend it, and we want to lend it, and there is competition there, in regard to the matter of rates in our neighborhood.

"Q. Under what class do you place people that purchase mortgages from them?

"A. They are investors who want to invest their funds, apply sometimes to us, sometimes to other people.

"Q. Do you call that lending money?

"A. On their part?

"Q. Yes.

"A. Yes.

"Q. That is what I want to ask you: what you

mean by lending money: Do you mean buying securities is lending money? You used the term lending money as including the purchase and investment in securities.

"A. Yes.

"Q. So that your answer is that everyone who makes an investment in a security because of the return that he will receive in interest for that security is lending money?

"A. Yes.

"Q. Is in competition with the bank?

"A. Yes.

Mr. Simons also testified that his bank held mortgages amounting to from seventy to ninety thousand dollars.

As against this testimony, which went to the details of the making of various investments and the use of moneyed capital by individuals and corporations, the petitioner called one witness, Mr. Thornton, who testified principally with reference to the items making up listed money and credits, and even he found competition between banks and some of the moneyed capital so listed. Mr. Thornton's testimony appears on pages 233-249 of the Record.

The purpose of Congress, when allowing the states to tax shares of national banks, to limit the power to a tax which should be fair as compared with that imposed upon other similar property in the hands of individual citizens is obvious.

It is also obvious, as has been said by this Court, that the comparison is not to be made with all property, nor was it intended to interfere with the general plan of taxation which a state might adopt so long as discrimination between national bank shares and other moneyed capital coming into competition with such shares did not result. This Court has therefore excluded from consideration various investments which do not come into competition with banks. Thus, shares in manufacturing and mercantile corporations were

excluded, for the reason that although the purchase of such shares by an individual was the investment of his moneyed capital, still the business of the corporation being entirely different from the business of banking, such investments were excluded. Investments in building societies and in savings banks were excluded for somewhat different reasons. Originally debts secured by mortgage upon real estate were excluded because national banks were without authority to lend money upon such security.

Other moneyed capital, however, when used for the purpose of securing a return from its use as money, and particularly when invested in securities which normally enter into the business of banking, has always been held as moneyed capital within the intent of the act of Congress when its use was such as to bring it into competition with the business of national banks.

The competition required is obviously such as arises from the use of the capital itself and not from the occupation of the individual owner; for, it is the classification of the capital which is material rather than the individual who happens to own it.

It may be conceded, also, that the merely personal investments of small amounts by individuals would not establish the existence of moneyed capital.

The amount of such competing capital must be material, but that is a question of degree, and if purely personal investments in securities which normally enter into the business of banking were sufficiently extensive, they would, in the aggregate, constitute just as sharp competition as would the investments of a single private banker to the same amount, although in one case the individuals might not be engaged in the investment business and, in the other, the individual would be exclusively so engaged.

Money is a commodity, and the price of money is the

interest paid which is fixed by the amount of money seeking investment, whether it comes from individuals loaning their money for mere personal investment or from individuals engaged in the banking business. It is not the source from which competition comes, but the amount of it, that fixes the price. The price of money, like the price of grain or any other commodity, is fixed and regulated by supply and demand.

Mr. Brown, President of the Respondent Bank, in his testimony applied this economic law to the business of banking, as also did the other witnesses called by the Respondent.

Had Congress intended to limit competition to that caused by state banks and investment houses, it would not have used the language "other moneyed capital in the hands of the individual citizens of the state." Obviously it was believed, if the investments and activities of individuals were to be disregarded, the great bulk of the moneyed capital owned by individuals in the different states might be so favored in the matter of taxation that national banks could not exist.

Boyer vs. Boyer, 113 *U. S.* 689.

In the case of *First National Bank of Guthrie Center vs. Anderson*, 269 *U. S.* 341, it was said that the definition of competing moneyed capital found in the case of *Mercantile National Bank vs. New York*, 121 *U. S.* 138, would exclude mere personal investments. There are many reasons we submit why that language should not be taken to apply here.

Judgment had been entered in the state court upon a demurrer to the complaint. Whether the complaint stated a cause of action was the only question before this court for its decision. The allegations relied on by the plaintiff are set out in the opinion of this court beginning at page 343.

The complaint after alleging a tax upon national bank shares at the rate of 143.5 mills, alleged:

> "That under the laws of Iowa a levy of only five mills on the dollar is imposed upon notes, mortgages and other evidences of debt, and investments of individuals in securities, which represent money at interest, and other evidence of indebtedness such as normally enter into the business of banking*****. That the amount of notes, mortgages and other evidences of money loaned and put out at interest by individual citizens in the town of Guthrie, Iowa, was***** 'more than five millions of dollars' *****while the total of all bank stock ***** does not exceed the sum of $316,852.*****
>
> "That said assessment is erroneous ***** because by said assessment the shares of stock of the plaintiff are subjected to a greater assessment and tax than is imposed upon money capital in the hands of individual citizens in said state, used and utilized in the same business."

These allegations were by this court held sufficient to state a cause of action, which was the only question necessarily decided in that case. The cause arose prior to the amendment of Section 5219 by the Act of March 4, 1923, and in passing upon the contention of the State of Iowa that the amendment was a legislative construction of Section 5219 prior to its amendment, this Court said (p. 350) that in this respect

> "***** In legal contemplation and practical effect the restriction was the same before the re-enactment as after."

Inasmuch as this court had uniformly held that the term "moneyed capital" as used in Section 5219 prior to the amendment, referred only to moneyed capital so used or invested as to bring it into competition with the business of banks, this conclusion as to the effect of the amendment is, we submit, in harmony with those prior decisions since the amendment excluded merely "personal investments *not made in competition with such business.*"

It may also be true that whereas investments in state bank shares or financial corporations as well as the activities and investments of private bankers and those directly engaged in the business of making investments of moneyed capital are *per se* competitive, the mere personal investments of an individual may, or may not be so, depending upon the extent and character of such transactions. But if in fact competitive, such investments come within the terms of Section 5219 before and after the amendment.

It would be difficult to find an instance where the decisions are more uniform than upon this subject. From the beginning this Court has held the words "other moneyed capital in the hands of individual citizens" to mean capital so invested as to bring it into competition with banks. Unless the capital was employed in the same manner as that of banks there existed no reason for requiring equality in the tax upon such capital and bank shares. Obviously it included something more than the direct competition of banks and investment houses or the amendment of 1868 would not have been made by which the special reference to the shares of state banks was stricken from the statute (15 St. at Large, Ch. 7, p. 34).

It is also plain that if the individual is at liberty to invest his capital in securities such as the notes, bonds, demands and credits which normally enter into the business of banking, and pay upon such investment a lower tax than would be required of him upon his investment in national bank shares, there is discrimination against those shares.

Mercantile Natl. Bank vs. New York, supra.

Since competition is a question of fact to be determined in each case as it arises, this court has never attempted to do more than announce the controlling principles upon which this class of actions must be determined and apply those principles to the facts in the particular case then before the Court.

The Court did, however, describe the class of securities, investments in which *might* bring the moneyed capital of the individual investor into competition with national banks, and at the same time described other investments which could not be considered competitive.

One of the earliest cases was

People vs. Weaver, 100 *U. S.* 539.

where it was held that a state law permitting a citizen to deduct his debts from the amount of his moneyed capital, except bank shares, violated the Fedral law. There was no distinction made as to the nature of the business or occupation of the individual citizen but only as to the character of his investments. The Court in determining the Congressional intent (p. 543) declared it was as though Congress said:

> "***** You may tax the real estate of the banks as other real estate is taxed, and you may tax the shares of the bank as the personal property of the owner to the same extent you tax other money capital invested in your state."

This language was quoted with approval in

Boyer vs. Boyer, 113 *U. S.* 689.

In that case the question was whether the laws of Pennsylvania prescribed a higher tax upon national bank shares than upon

> "***** bonds or certificates of loan issued by any railroad company incorporated by the state; from shares of stock *****; from mortgages, judgments and recognizances of every kind; from moneys due ***** for the sale of real estate *****." (p. 699).

and the state statutes were held to violate the provisions of Section 5219, Rev. St. U. S.

Again in referring to the interpretation placed upon the Federal statute by the Supreme Court of Pennsylvania, it was said (p. 702):

> "***** If by this language it is meant that an illegal discrimination against capital invested in national bank

shares cannot exist where no higher rate or heavier burden of taxation is imposed upon them than upon capital invested in state bank shares or in state savings institutions, we have to say that such is not a proper construction of the Act of Congress. Capital invested in national bank shares was intended to be placed upon the same footing of substantial equality in respect of taxation by state authority as the state establishes for other moneyed capital in the hands of individual citizens however invested, whether in state bank shares or otherwise."

A statute of Indiana was held invalid in *Evansville Bank vs. Britton*, 105 *U. S.* 322. There the taxpayer was required to list (p. 324):

"1. Credits or money at interest, either within or without the state, at par value.

"2. All other demands against persons, or bodies corporate, either within or without this state.

"Total amount of all credits."

From the sum of these amounts *bona fide* debts might be deducted, and in determining the effect of such statute this court said (p. 324):

"The Act of Congress does not make the tax on personal property the measure of the tax on bank shares in the state, but the tax on moneyed capital in the hands of the individual citizens. Credits, money loaned at interest, and demands against persons or corporations are more purely representative of moneyed capital than personal property, so far as they can be said to differ. Undoubtedly there may be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not necessarily moneyed capital. But the rights, credits, demands, and money at interest mentioned in the Indiana statute, from which *bona fide* debts may be deducted, all mean moneyed capital invested in that way."

The next case in this Court to which we wish to call attention is the leading case of *Mercantile National Bank vs. New York*, 121 *U. S.* 138.

The Evansville case was upon the October, 1881, term and the Mercantile case was decided April 4, 1887. During this period only one or two changes occurred in the personnel of this Court.

In the Mercantile case, when giving the "key" to the interpretation of Section 5219, this Court said (p. 154):

> "***** The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, *and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking.****** The main purpose ***** was to render it impossible for the state in levying such a tax to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business *and operations and investments of a like character.*" (Our italics).

And at page 157:

> "The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment."

It is apparent the Court, by this language was not limiting moneyed capital to that owned by a banker or individual whose *business* was banking or the making of investments for after describing such *business* it was pointed out that the act of Congress also included money in the hands of individuals employed in a similar way, not that the indi-

vidual is so employed, but that the money is "invested in loans," etc.

One of the prior decisions referred to in the Mercantile case was

People vs. Commissioners, 4 *Wall.* 244.

In that case the court in referring to the act of Congress said (p. 256):

> "This rule seems to be as effectual a test to prevent unjust discrimination against the shareholders as could well be devised. It embraces a class which constitutes the body politic of the state, who make its laws and provide for its taxes."

Certainly by this language the Court meant to include the citizens of the state generally, those engaged in many different occupations but making investments and putting their surplus funds at interest as the occasion offered. If they, in the aggregate, made such investments to a material amount, and such investments were in securities which normally enter into the business of banking and were in fact made in competition with the business of banking, then the tax upon them formed the test upon which discrimination was to be determined.

In 1921 there came before this Court

Merchants Natl. Bank of Richmond, Va. vs. City of Richmond, 256 *U. S.* 635.

and this Court said (p. 638):

> "The Supreme Court of Appeals entertained the view that the purpose of Sec. 5219, Rev. Stats., was confined to the prevention of discrimination by the States in favor of state banking associations as against national banking associations, and that since none such is shown here there was no repugnance to the federal statute. This, however, is too narrow a view of Sec. 5219."

And at page 639:

> "By repeated decisions of this court, dealing with the restriction here imposed, it has become established

that, while the words 'moneyed capital in the hands of individual citizens' do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into *direct* competition with those banks. They include not only moneys invested in private banking, properly so called, but investments of individuals in securities that represent money at interest and other evidences of indebtedenss such as normally enter in the business of banking." (Our italics).

After referring to Mercantile Bank vs. New York, supra, and other decisions of this Court, it was said (p. 641):

"No decision of this court to which our attention is called has qualified that rule, or construed Section 5219 as leaving out of consideration the rate of state taxation imposed upon moneyed capital in the hands of individual citizens invested in loans or securities for the payment of money, either for permanent or temporary purposes, where such moneyed capital comes into competition with that of the national banks."

It cannot be said that this decision was based upon the theory that the moneyed capital shown to exist was in the hands of persons whose business was the making of investments. For, after referring to the aggregate moneyed capital shown, the Court said (p. 638):

"It is to be inferred that a substantial part of this aggregate was in the hands of individual taxpayers; the precise amount does not appear."

In referring to the Richmond case this Court in First National Bank vs. Anderson, supra, said (p. 348):

"In the briefs there is some discussion as to whether our decision in Merchants Natl. Bank vs. Richmond, 256 U. S. 635, attributed to the term 'other moneyed capital' a wider meaning than was recognized before. But nothing was said in the opinion indicating that an enlargement was intended. On the contrary, it dis-

tinctly accepted the meaning adopted in prior decisions."

Later the Court said (p. 349):

"If the outcome was open to criticism, it was not because any enlarged meaning was attributed to the term 'other moneyed capital,' but because the facts bearing on the question of competition were not sufficiently brought out at the trial and shown in the record."

The testimony produced in the Richmond case as to competition was, as said by this court "somewhat meager." It consisted of the testimony given by Mr. McAdams, Vice President of the Bank, and is found at page 47 of the record:

"Q. Will you kindly state whether or not money capital in the hands of individuals invested in bonds, notes and other evidences of debt, comes in competition with national banks.

"A. Yes.

"Q. Will you kindly explain how this is so.

"Mr. Pollard: I object.

"The Court: Objection overruled.

"Mr. Pollard: Exception.

"A. Our assets are invested in bonds, notes and other evidences of debt. The loan or money or the extension of credit is simply regulated, or largely regulated, by supply and demand. The more money there is to be loaned by individuals or corporations the natural tendency is for a lower rate than a bank can get in a similar investment. In other words, the greater the competition the lower the rate; the greater the demand, the higher the rate."

On that testimony this court said (p. 638):

"It also was shown by evidence without dispute that moneyed capital in the hands of individuals invested in bonds, notes and other evidences of indebtedness comes into competition with the national banks in the loan market."

The evidence produced in this case is not only much stronger and more comprehensive than that given in the

Richmond case but is more satisfactory because it was not here ignored as it apparently was in that case. Here counsel were fully alive to the question of competition and endeavored by searching and adroit examination to argue the witnesses out of their positions but finally were unable to present any substantial evidence in contradiction.

In the actions at bar the Supreme Court of Minnesota commented upon the evidence in the language we have already quoted (R., p. 322):

We confidently submit, therefore, in view of the summary of prior decisions and the statement that no extension of the definition of "moneyed capital" was intended in the Richmond case found in the opinion rendered by this *Court in First National Bank of Guthrie Center vs. Anderson, supra,* that the decision there amounted to a distinct approval of the definition given in the Richmond case, and that the language in the opinion referring to personal investments cannot be taken to qualify that definition even though our suggestion that it was *obiter dictum* is without merit.

It is unimportant here whether mere personal investments come within the meaning of Section 5219, as neither the evidence nor the findings were confined to investments of that character; there were included the regular transactions, business and investment of trust companies, note brokers, investment houses and shares of stock in financial companies.

It was shown that trust estates and agency accounts held by trust companies amounted to over fifty million dollars, ninety per cent of which was held for the benefit of citizens of Minnesota, and that ninety per cent of those millions, amounting in the aggregate to almost the total value of the shares of national banks in Minnesota, was invested in securities which normally enter into the business of banking.

These investments were not the personal investments of any individual. They were made in the course of and as a part of the business carried on by the trust companies. They were made in competition with the banks and any affiliation between some banks and some trust companies could have no bearing upon this class of the activities of the trust company since it would be its duty to act solely with regard to the best interests of the *cesti qui trust.* The extent to which investments were made in real estate mortgages was shown and some segregation of such investments between corporations and individuals.

How and what part of this moneyed capital came into competition with the business of national banks was shown by competent and practically uncontradicted testimony, and the findings made upon that showing if placed in parallel columns with the findings of this court in the Richmond case and the allegations of the complaint in the Anderson case, would we submit, be sufficient to establish that the judgment of the Supreme Court of Minnesota must be affirmed.

It may sometimes be difficult to determine whether or not the equality required by Section 5219 has been preserved. But, where, as in this case, we find national bank shares singled out from all other forms of moneyed capital and taxed at a rate about nine times as great there can be no claim that the equality intended by Congress has been preserved.

IV.

THIS COMPETING MONEYED CAPITAL WAS ASSESSED UNDER THE MINNESOTA STATUTES EITHER AT A RATE MUCH LOWER THAN THAT PRESCRIBED FOR SHARES IN NATIONAL BANKS OR LEFT ENTIRELY UNTAXED.

We will discuss state banks and trust companies under

separate headings, but here, at the risk of repetition, again call attention to the Minnesota taxing statutes applicable to the forms of moneyed capital we have thus far considered.

(a)

Money and Credits, 3 mills. Ch. 285, Laws 1911, Sec. 2316 Gen. St. 1913. (Appendix D).

(b)

Mortgages on real estate and executory contracts for the sale of real estate, 1½ to 2½ mills registry tax which covers the entire period for which the credit is extended (Appendices B and C).

(c)

Corporate stock, except national bank shares, was untaxed unless its market value exceeded the value of its taxable property.

Sec. 838, Revised Laws 1905, Sec. 2015, Gen. St. 1913. (Appendix G).

State vs. Duluth Gas & Water Co., 76 Minn. 96.

State vs. St. Paul Trust Co., 76 Minn. 423.

It is possible that the stock of some corporation having a large earning power, would have a value exceeding that of its physical property and that in such case the excess would be listed under "bonds and stocks," but no financial or investment corporation could be in that condition, and their capital stock therefore which would constitute moneyed capital within the meaning of Sec. 5219 was entirely untaxed. In the event such excess was found, it would take the 3 mill rate.

(d)

As already said, Sec. 839, Rev. Laws 1905, Sec. 2016, Gen. St. 1913 (Appendix H) provided a method for taxing the property of private banks and stock brokers and as that section has never been directly repealed, it should be referred to here.

By this statute private bankers and stock brokers were required to list:

1. The amount of money on hand or in transit.

2. The amount of funds in the hands of other banks, brokers, or others subject to draft.

3. The amount of checks or cash items not included in either of the preceding items.

4. The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.

5. The amount of bonds and stock of every kind (except United States bonds), and shares of capital stock of joint stock or other companies or corporations held as an investment, or in any way representing assets.

6. All other property appertaining to said business other than real estate, which shall be listed and assessed as other real estate under this chapter.

7. The amount of all deposits made with them by other persons.

8. The amount of all accounts payable, other than current deposit accounts.

The aggregate of items 7 and 8 were to be deducted from the aggregate of items 1, 2, 3 and 4, and the remainder, if any, listed as "money"; item 5 to be listed as "bonds and stocks" and the property going to make up item 6 to be listed as other property of like character.

Items 1, 2, 3 and 4 are assets and within the definition of money and credits, items 7 and 8 are debts which, if deducted from credits, would under the present law leave a balance to be taxed at the 3 mill rate only. Item 5, bonds and stocks, would also take the 3 mill rate. Three mills, therefore, on the aggregate of items one to five inclusive, without any deduction, would produce a larger return than could be secured by following the method provided by section 839, Rev. Laws 1905, and taxing the residue at 3 mills.

It was because of this situation, we presume, the Tax

Commission directed the money and credits of such persons and companies to be directly taxed under the money and credits law of 1911, and section 389, we understand, has been considered repealed (notes in Tax Manual 1921, Petitioner's Ex. 2, R., p. 381 and Tax Manual 1922, Petitioner's Ex. 3, R., p. 389).

State vs. Tax Commission, 117 *Minn.* 159.

Such repeal is immaterial in these actions as the discrimination against bank shares exists under either construction.

Evansville Natl. Bank vs. Britton, 105 *U. S.* 322.

These statutes render the tax attempted to be levied upon shares in national banks invalid under all the decisions.

People vs. Weaver, 100 *U. S.* 539.
Boyer vs. Boyer, 113, *U. S.* 689.
Evansville National Bank vs. Britton, 105 *U. S.* 322.
Mercantile National Bank vs. New York, 121 *U. S.* 138.
Aberdeen Bank vs. Chehalis County, 166 *U. S.* 440.
Merchants National Bank of Richmond vs. City of Richmond, 256 *U. S.* 635.
First National Bank of Guthrie Center vs. Anderson, 269 *U. S.* 341.
Eddy vs. First National Bank of Fargo, 275 *Fed.* 550.
People vs. Goldfogle, 234 *N. Y.* 345.
State vs. Wallace, 187 *N. W.* (*N. D.*) 728.
First National Bank of Watertown vs. Eddy (*S. D.,*) 197 *N. W.* 290.

V.

THE FACTS FOUND BY THE SUPREME COURT OF MINNESOTA ARE FULLY SUPPORTED BY THE EVIDENCE.

As we have already pointed out the Supreme Court of

Minnesota carefully considered the evidence which appeared in the record and its effect under the decisions of this Court and finally summed up its conclusions as follows (R., p. 323):

> "The undisputed and unquestioned facts shown by the record convince us that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disregarded, is employed in competition with national banks within the meaning of section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the State to enforce."

The Supreme Court, found as a fact, the existence in the hands of individual citizens of competing moneyed capital (R., p. 323), exclusive of mortgages (R., p. 321) but including "shares of stock held by individuals in corporations, the business of which is the making of profit by using their capital as money" (R., p. 314) "and too large in amount to be overlooked or disregarded." (R., p. 323).

Counsel for petitioner argued when applying for the Writ of Certiorari, that the Supreme Court of Minnesota did not find the fact of competition upon the evidence produced at the trial, but either assumed competition from the character of the securities themselves or erroneously interpreted the decisions of this court as so holding.

This argument ignores the ultimate facts found by the Court and upon which its conclusions were actually based.

Whether or not competition exists is a question of fact to be determined as any other dispute from the evidence, including the character of the securities, statements and opinions of witnesses competent to testify, and every other circumstance proper to be considered in arriving at a conclusion of fact.

The language used by the Supreme Court found on page 316 of the Record, was in answer to petitioner's claim

"That the record does not require a finding that the funds invested in these credits come into competition with national banks within the meaning of Section 5219."

In answering this claim, the court said (R., 316):

"Surplus funds are moneyed capital; and the Federal courts, if we understand their decisions correctly, have repeatedly held that placing such funds at interest in the form of ordinary loans or investing them in interest bearing securities whether as permanent personal investments or for temproary purposes, brings them in competition with national banks within the meaning of Section 5219, as it stood prior to the amendment of 1923."

That statement must be read in connection with the entire opinion and particularly in connection with the language we have first quoted as embodying the final conclusions of the Court (R., p. 323), and is in entire harmony with *First National Bank of Richmond vs. City of Richmond, supra,* as that decision has been generally understood and interpreted.

Eddy vs. First National Bank, 275 *Fed.* 550.
State vs. Wallace, 187 *N. W.* (*N. D.*) 728.
State Bank of Omaha vs. Endres, (*Neb.*) 192 *N. W.* 322.
Central National Bank vs. Sutherland (*Neb.*) 202 *N. W.* 428.
First National Bank of Watertown vs. Eddy, 197 *N. W.* (*S. D.*) 290.

It is, we submit, entirely in accord with the decision in *First National Bank of Guthrie Center vs. Anderson, supra,* where Mr. Justice Van Devanter summarizing and grouping prior decisions said (p. 348):

"3. Moneyed capital it brought into such competition where it is invested in shares of state banks or in private banking and also where it is employed substantially as in the loan and investment features of banking, in making investments by way of loan discount or

otherwise in notes, bonds or other securities, with a view to sale or repayment and reinvestment."

However, the respondent did not rest upon the claim that such securities representing the investment of moneyed capital by individuals, *per se*, established competition, nor did it rest its case upon the mere existence of such investments. Upon the contrary it presented expert evidence both upon the question of competition and upon the existence of other and additional forms of moneyed capital.

All of this evidence was considered by the Supreme Court, and its final conclusion was based not upon the mere existence of such investments but upon the testimony "of several witnesses * * * " and "the undisputed and unquestioned facts * * *" (R., 332-3).

It will be noted, the Supreme Court of Minnesota took into consideration "shares of stock held by individuals in corporations, the business of which is the making of profit by using their capital as money." * * * * (R., p. 314), and had the decision of this court in the case of *First National Bank of Guthrie Center* vs. *Anderson, supra,* been previously made it would have included the huge sums represented by mortgages upon real estate. So, that in considering the support found in the record to the direct conclusion of the court, such shares of stock and mortgages must be given due weight, although neither were included in the moneyed capital reported as "money" and "credits" and taxed at the 3 mill rate, since, as we have already pointed out, moneyed capital represented by shares of stock was entirely untaxed and that represented by mortgages paying only a registry tax, which was much less than 3 mills.

The capital stock of trust companies and other financial or investment companies, amounting to more than thirteen million was shown to exist. This stock, ignoring for the

present shares of trust companies receiving deposits, was entirely untaxed and a large portion of it was, as we have already pointed out, shown to be held by individual citizens of the State. This form of moneyed capital must be conceded to have been invested in a business which came into direct competition with the business of national banks and was sufficient in amount to be material.

We have already pointed out the amount of moneyed capital invested in mortgages. The only tax imposed was the registry tax, namely, 1½ mills where the loan was payable in five years or less, and 2½ mills when payable after five years. The registry fee, or tax upon mortgages, is a general tax, the condition as to registry being merely the means devised for collecting it.

Federal Land Bank of New Orleans vs. *Crosland* 261 *U. S.* 374.

Many of such loans were by individual citizens and many others by corporations and investment companies. The Supreme Court of Minnesota, in the absence of a decision of this court, refused to include these investments as competing moneyed capital. Since the decision of this court in the case of *First National Bank of Guthrie Center* vs. *Anderson, supra,* we can see no escape from the conclusion that such loans when made by individuals constitute competing moneyed capital within the meaning of the Act of Congress, and such loans, where made by corporations, render the investments of individual citizens in the capital stock of such corporations also competing moneyed capital.

While we feel that the existence of these loans is of the utmost importance in these actions, and we desire as earnestly as possible to press our claim in that respect upon the attention of this court, we think that any further discussion by us should be omitted, because of the unavoidable length of this brief.

While all these forms of moneyed capital should have been taken into account in considering the sufficiency of the evidence to support the finding of competition, the Supreme Court of Minnesota omitted mortgages and did not pass upon our claim as to the effect of taxing trust companies upon gross earnings. It did, however, include as moneyed capital to be considered shares of stock in financial corporations. (R., p. 314).

It analyzed the character of the moneyed capital amounting to four hundred twenty-five million dollars, called "money" and "credits" under the Minnesota statutes and taxed at the 3 mill rate, and determined that much of it represented investments of moneyed capital, which this court had said normally entered into the business of banking. It is merely juggling with words to argue whether the Supreme Court of Minnesota said the character of this moneyed capital was such that it *might* come into competition or *did* come into competition with national banks. The truth is, that under all the decisions, it at least is moneyed capital which may come into competition with national banks, as distinguished from moneyed capital such as investments in manufacturing and mercantile companies which this court has held cannot come into such competition.

Having thus correctly classified this moneyed capital, the Supreme Court of Minnesota proceeded to analyze and discuss the evidence offered upon the trial with reference to competition, and found it to be uncontradicted in its entirety, although one witness doubted that competition existed between all the items, and having thus ascertained correctly the character of the moneyed capital, and finding that the evidence was overwhelming that actual com-

petition existed, the Supreme Court announced its ultimate conclusion.

On page thirty-eight of the brief with the petition for the Writ of Certiorari it is *admitted that some of the moneyed capital shown to have been taxed at the* 3 *mill rate might have been competitive,* but it is said "they were not shown in this case to be competitive and the Supreme Court's ruling, overturning the trial court's finding that there was no material competition, was based wholly upon its theory that they are under all circumstances competitive, in which ruling we submit, it misapplied this court's decisions."

We submit that statement by counsel for petitioner was an inadvertant but palpable misinterpretation of the conclusions of the Supreme Court of Minnesota. It is contradicted by the entire record, including the testimony of the witness called by petitioner. It not only ignores the entire opinion of the Supreme Court of Minnesota, but is in direct conflict with that Court's statement of its position. This fact seems so important we again quote from the opinion (R., p. 322, 3):

> *"Several witnesses called by defendant testified* that in their opinion all the capital employed for the various purposes hereinbefore mentioned, and also for several other purposes not specifically mentioned, comes into competition with the banks, and gave in detail the reasons for their conclusions. *The only witness called by plaintiff* testified briefly that in his opinion there would be some competition in some of the items among which he included book accounts, but that there would be little or no competition in other items as they did not represent a class of loans or credits in which the banks were dealing.
>
> *"The undisputed and unquestioned facts shown by the record convince us* that moneyed capital in the hands of individual citizens, taxed at the 3 mill rate and too large in amount to be overlooked or disre-

garded, is employed in competition with national banks within the meaning of section 5219 as interpreted by the Supreme Court of the United States. It necessarily follows that the tax assessed against defendant is beyond the power of the State to enforce." (Italics ours).

VI.

THE FINDINGS OF FACT BY THE MINNESOTA COURT ARE CONCLUSIVE.

The first appeal to the Supreme Court of Minnesota resulted in a direction for a new trial and the actions went back to the District Court for trial *de novo.*

Backus vs. Burke, 52 *Minn.* 109.

It was the privilege of either party to introduce the same or additional evidence. The course followed here was to resubmit the actions upon the record already made (R., p. 325, 326), and thereupon the trial court found money and credits for 1921 to have been for entire state $422,745,839. Ramsey County alone $83,965,268. And in 1922, State $400,688,948; Ramsey County $87,796,840; which were "exempted from taxation other than 3 mills of the fair value thereof*****." (Finding 7, R., p. 332).

The eighth finding was as follows (R., p. 333):

> "That at the time of the assessment of said taxes for the years 1921 and 1922, a substantial and relatively material portion of the money and credits so listed and assessed in said Ramsey County, consisted of moneyed capital in the hands of individual citizens of said County coming into competition with the business of national banks in said County, and with the business of said defendant."

This was a general finding of the ultimate and controlling facts and sufficient to support judgment.

Hewitt vs. Blumenkranz, 33 *Minn.* 417.

Hurley vs. The Mississippi & Rum River Boom Co., 34 *Minn.* 143.

Combination Steel and Iron Co. vs. St. Paul

City Ry. Co., 52 *Minn.* 203.
Cummings vs. Rogers, 36 *Minn.* 317.
Brown vs. Roberts, 90 *Minn.* 314.

It was a finding of facts which could have been attacked while the actions were in the Minnesota courts by one of the following methods:

If the finding was considered indefinite or based upon an assumption of competition arising solely from the character of the securities that situation could have been developed by a motion to amend, or for additional findings.

The rule in Minnesota is thus given in *Hewitt vs. Blumenkranz, supra,* (p. 417):

> "If the finding was not sufficiently specific, the trial court should have been moved to make it so; otherwise the objection is waived."

No such motion was made, but an appeal was taken from the judgment. Upon this appeal the sufficiency of the evidence to support the facts as found could have been presented and the affirmance which followed the appeal necessarily includes an affirmance of the findings.

The eighth finding, therefore, appearing at page 333 and above quoted, will here be taken as conclusive.

Hedrick vs. Atchison, T. & S. F. R. Co., 167 *U. S.* 673, 677.
Chapman & D. Land Co. vs. Bigelow, 206 *U. S.* 41, 45.
Crisman vs. Miller, 197 *U. S.* 313-319.

In the last case above cited this court said at p. 319:

> "We do not review questions of fact, but accept the conclusions of the state tribunal as final."

We feel this situation was not sufficiently developed upon the application here for the Writ of Certiorari and that the suit should now be dismissed under the rule announced in

Southern Power Co. vs. North Carolina Public Service Co., 263 *U. S.* 508.

where this Court said at page 509:

"This writ must be dismissed. The petition therefor stated that the cause involved a grave question of vital importance to the public, and alleged as a special reason for its re-examination that the decree would deprive petitioner of property without due process of law and of freedom to contract, contrary to the Federal Constitution.

"The argument developed that the controverted question was, whether the evidence sufficed to establish actual dedication of petitioner's property to public use —primarily a question of fact. That is not the ground upon which we granted the petition and if sufficiently developed would not have moved us thereto."

And without reference to the merits of the case, the Writ was dismissed.

VII.

CHAPTER 529, LAWS 1913 (APPENDIX E). TAXING TRUST COMPANIES UPON GROSS EARNINGS CREATED DISCRIMINATION.

While the amount of moneyed capital invested in shares of trust companies not receiving deposits, $2,135,000 (Respondent's Ex. J) is not large in itself, the statute (Appendix E) providing for a gross earnings tax upon those companies, creates discrimination.

People vs. Goldfogle, 234 *N. Y.* 345.

The difference in the rate is very material, as shown by Respondent's Exhibit J.

The illustration there given shows the tax upon the trust company to be at a rate only a little more than one-half that imposed upon national bank shares.

The shares in the trust company are entirely untaxed.

VIII.

CHAPTER 416, LAWS 1921, CREATES DISCRIMINATION BETWEEN STATE AND NATIONAL BANKS.

Chapter 416 (Appendix A) provided the method for taxing the *shares* of national banks and the *moneyed capital* of banks organized under the laws of Minnesota. This included trust companies receiving deposits (Respt's Ex. C). (R., p. 350).

Section 1 of the Act reads:

> "The *shares* of stock of every bank in this State organized under the laws of the United States, and the *moneyed capital* of every bank or mortgage loan company organized under the laws of this State shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located." (Our italics).

Section 2 provides:

> "The shares of stock of banks organized under the laws of the United States shall be assessed and taxed against the holders thereof, but in the name of the bank, and the taxes levied thereon shall be paid by such bank as agent of the stockholders, regardless of where such stockholders may reside. The moneyed capital of every bank and mortgage loan company organized under the laws of this State shall be assessed and taxed against such bank or mortgage loan company, and the taxes levied thereon shall be paid by such bank or mortgage loan company."

Section 3 provides for ascertaining the value of the shares of national banks and the value of the moneyed capital of the state banks in an identical manner.

This Chapter 416 was a repeal of Sections 2017 and 2020, General Statutes 1913 which provided (Section 2017):

> "The stockholders of every bank or mortgage loan company in this State organized under the laws of the State or of the United States shall be assessed and

taxed on the value of their shares of stock therein" etc.

The method of ascertaining the value of the shares was substantially the same as provided by Chapter 416, Laws 1921.

Inasmuch as these taxes had always been nominally, under Sections 2017 and 2020, assessed against the banks, and as no reference to the Act of 1921 appeared in the tax manuals issued by the State Tax Commission (Petitioner's Exs. 2 and 3, R., pp. 375 and 389), the change in the law apparently went unnoticed by the banks, and state banks took no advantage of the opportunity, which they in fact had, of deducting from their assets tax-exempt securities. (Bacon, R., 260).

At the time of the assessment of these taxes state banks held in 1921 United States bonds amounting to $13,369,840.00, and in 1922, $10,004,241.00 (Respt. Ex. C and D), and respondent held in 1921 United States bonds amounting to $3,453,665.00, and in 1922, $11,343,234.00 (Respt's Ex. C and D).

Securities of the United States are immune from taxation. A state statute placing a tax upon such sureties is void. This rests upon the principle that the power to borrow money on the credit of the government might be impaired if the state had the right to tax such securities and this exemption was confirmed by Act of Congress of February 28, 1862, 12 Statutes at Large, 346, which provides that

> "All stocks, bonds and other securities of the United States held by individuals, corporations or associations within the United States, shall be exempt from taxation by or under state authority."
>
> *Home Savings Bank vs. Des Moines*, 205 *U. S.*, 503, 513.

Equality of taxation must be preserved between national and state banks. It is obvious that an unjust discrimination in favor of state banks results if these securi-

ties are included in the taxation of national banks and excluded in the taxation of state banks.

Van Allen vs. The Assessors, 3 *Wall.* 573.
McCullough vs. Maryland, 4 *Wheat.*, 315.
People vs. Commissioners, 4 *Wall.* 244.
Boyer vs. Boyer, 113 *U. S.* 689.
Owensboro National Bank vs. Owensboro, 173 *U. S.* 664.
Home Savings Bank vs. Des Moines, 205 *U. S.* 503.
Des Moines National Bank vs. Fairweather, 263 *U. S.* 103.

In *Van Allen vs. The Assessors, supra*, it was held (p. 583):

"The tax on the shares is not a tax on the capital of the bank," and

that this interest (the shares) is the only interest which Congress has permitted the states to tax.

The New York statute in that case provided for a tax on the shares of national banks not exceeding the par value of such shares while state banks were taxed upon their capital. This court held that the tax was void because the capital of the state banks might consist of bonds of the United States, which are exempt from state taxation, and, for that reason, the tax on the capital of the state bank was not equivalent to a tax on the shares of the stockholders.

The Court at page 581 said:

"The defect is this: One of the limitations in the Act of Congress is, 'that the tax so imposed under the laws of any State upon the shares of the associations authorized by this act, shall not exceed the rate imposed upon the shares of any of the banks organized under the authority of the State where such association is located.' The enabling act of the State contains no such limitation. The banks of the State are taxed upon their capital; and although the act provides that the tax on the shares of the national banks shall not exceed the par value, yet, inasmuch as the capital of the State

banks may consist of the bonds of the United States, which are exempt from State taxation, it is easy to see that this tax on the capital is not an equivalent for a tax on the shares of the stockholders."

Whether a state statute commands an assessment on the property of the bank rather than the shares, contrary to Section 5219, is a proper question for decision by this Court.

Home Savings Bank vs. Des Moines, supra.
Des Moines Bank vs. Fairweather, supra.

The Minnesota Statute (Chapter 416, Laws 1921) expressly lays the tax on the shares of national banks and on the moneyed capital of state banks.

The "shares" of national banks are assessed "against the holders thereof," and the tax is paid by the bank, "as the agent of the stockholders," while "the moneyed capital" of the state bank is assessed and taxed "against such bank" and the tax "paid by such bank."

A similar statute was before this Court in *Home Savings Bank vs. Des Moines, supra*, p. 508.

The Iowa Statute provided that (p. 508):

> "*Shares of stock of state and savings banks* and loan and trust companies *shall be assessed to such banks* and loan and trust companies and *not to individual stockholders*,"

and the method of assessing and collecting the tax was substantially the same as the Minnesota Statute.

The Court said, at page 511:

> "The fair interpretation of the law is that the taxes are upon the property of the banks. In the valuation for taxation the assessor is required to 'take into account the capital, surplus and undivided earnings,' must be furnished with a 'verified statement of all matters provided by the preceding section,' which by reference is seen to be a detailed statement showing the assets of the bank."

At page 519:

"Without further review of the authorities it is safe to say that the distinction established in the Van Allen case has always been observed by this court, and that, although taxes by States have been permitted which might indirectly affect United States securities, they have never been permitted in any case except where the taxation has been levied upon property which is entirely distinct and independent from these securities. On the other hand, whenever, as in these cases, the tax has been upon the property of the corporation, so far as that property has consisted of such securities, it has been held void.

"One other consideration only needs to be noticed. It is said that where a tax is levied upon a corporation measured by the value of the shares in it, it is equivalent in its effect to a tax (clearly valid) upon the shareholders in respect of their shares, because, being paid by the bank, the burden falls eventually upon the shareholders in proportion to their holdings. It was upon this view that the lower court rested its opinion. But the two kinds of taxes are not equivalent in law, because the State has the power to levy one and has not the power to levy the other. The question here is one of power and not of economics. If the State has not the power to levy this tax, we will not inquire whether another tax which it might lawfully impose would have the same ultimate incidence."

A recent case upon this phase of these actions is *Des Moines National Bank vs. Fairweather, supra.*

In that case the question was whether or not the law of Iowa, under which an *individual taxpayer might omit his governmental securities, when listing his money and credits for taxation,* resulted in discrimination against national bank shares, the value of which was determined by including governmental securities. In holding no unlawful discrimination resulted, the Court said, page 116:

"Our concern here is not with a voluntary refusal or intentional omission on the part of the state to tax other moneyed capital of citizens as it taxes national

> bank shares, but with a submission by the state to superior laws of the United States exempting a part of the other moneyed capital from state taxation."

The state had, this court found, preserved equality as far as it was within its power to do so, but here the state repealed the law which established *equality* of taxation upon national and state bank shares and substituted one which allowed, if it did not actually compel, *inequality*.

The method of taxation provided by Chapter 416 of the Laws of 1921 prevented the owners of national bank shares from deducting the value of the federal securities held by the bank and resulted in giving the state banks that privilege. This was an "intentional omission" on the part of the state, and the discrimination existed, not because of the immunity granted by Congress, but because the state, with power to treat both kinds of shares alike, as it had done for many years, subjected national bank shareholders to a burden which was not shared by those in state banks. But whatever may be said as to the discrimination resulting from the deduction of governmental securities, the discrimination seems entirely clear when it is remembered that under these different systems a state bank could not only omit, or deduct, securities of the United States Government, but all tax-exempt securities.

It may be questionable whether under Section 3, Chapter 328, Revised Laws of 1907, (Appendix B), mortgages could have been also deducted but certainly tax-exempt municipals could have been.

We have not, therefore, a case of "submission by the state to superior laws of the United States," but one in which the State creates a discrimination exclusively by its own laws.

The deduction thus allowed state banks was from the net balance.

People ex rel vs. Barker, 154 *N. Y.* 128; 47 *N. E.* 973.

That this discrimination is material is shown by the following table:

TABLE GIVING COMPARISON OF TAX ON NATIONAL BANK SHARES AND ON STATE BANKS IF IMPOSED UNDER CHAPTER 416, LAWS 1921

	Value National Bank Shares Less Real Estate and Moneyed Capital of State Banks Less Real Estate.	40%	U. S. Bonds	Other Bonds and Securities	Total Amount for Taxation
National Banks					
Ex. M.....	$60,671,000.00	$24,268,000.00	$41,190,000.00	$33,894,000.00	$24,268,000.00
State Banks and Trust Companies Receiving Deposits,					
Ex. C.....	$43,681,688.00	$17,472,675.20	$13,866,927.91	$70,372,789.16*	$ 3,605,747.29

*Assumed to include mortgages.

The amount of real estate mortgages held by state banks was not separately shown but it seems certain such holdings were very large.

Chapter 416 is invalid on its face because it attempts to impose a tax beyond the authority granted by Congress.

The fact that the taxing authorities did not allow to state banks a deduction on account of their holdings of government securities, did not deprive the respondent from asserting the invalidity of the Statute. There cannot be a valid tax under an invalid law.

In *Louisville & Nash. R. R. Co. vs. Stock Yards Co.*, 212 *U. S.* 132, it was said (p. 144):

> "The law itself must save the parties rights, and not leave them to the discretion of the courts as such."

And in *Security Trust Co. vs. Lexington*, 203 *U. S.* 323, the Court said with respect to an assessment for back taxes (p. 333):

> "If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is, whether any notice is provided for by statute."

A decision which seems to us decisive that our claim as to the effect of Chapter 416 (Appendix A) is sound, is that in

Owensboro Natl. Bank vs. Owensboro, supra.

Where this Court, through Mr. Chief Justice White, said there must be "equivalency in law and equivalency in fact."

We quote as follows from that case (p. 676):

> "It is, however, urged that whilst the taxes may not be in form imposed on the shares of stock in the names of the shareholders, and may be in form a tax on the franchise or property of the bank, nevertheless they are equivalent to a tax on the shares of stock in the names of the shareholders, and therefore do not violate the act of Congress. But this proposition concedes that the taxing statute does not conform to the act of Con-

gress, and yet invokes its permissive authority, since, as already shown, without the grant made by the act of Congress there would be no power to tax at all. Passing, nevertheless, this contradiction, and looking beneath the mere form, we come to the substance of things. The alleged equivalency, in order to be of any cogency, must of necessity contain two distinct and essential elements—equivalency in law and equivalency in fact. Does it contain either? is the question.

"To be equivalent in law, involves the proposition that a tax on the franchise and property of a bank or corporation is the equivalent of a tax on the shares of stock in the names of the shareholders. But this proposition has been frequently denied by this court, as to national banks, and has been overruled to such an extent in many other cases relating to exemptions from taxation, or to the power of the States to tax, that to maintain it now would have the effect to annihilate the authority to tax in a multitude of cases, and as to vast sums of property upon which the taxing power is exerted in virtue of the decisions of this court holding that a tax on a corporation or its property is not the legal equivalent of a tax on the stock, in the names of the stockholders.* * *"

Page 683:

"Whilst this conclusion suffices to dispose of the case, we advert to the contention that although there may not be a legal equivalency, there is nevertheless one in fact, and therefore the tax should be sustained. It may be that in the case before us, there is a coincidence between the sum of the tax levied upon the corporation and the amount which would have been imposed had the shares of stock in the names of the shareholders been assessed according to the act of Congress. But that this is not the necessary result of the taxing statute is too plain to require comment.* * * If the mere coincidence of the sum of the taxation is to be allowed to frustrate the provisions of the act of Congress, then that act becomes meaningless and the power to enforce it in any given case will not exist. This fol-

lows since if mere coincidence of amount and not legal power be the test, only a pure question of fact would arise in any given case. The argument that public policy exacts that where there is an equality in amount between an unlawful tax and a lawful one, the unlawful tax should be held valid, does not strike us as worthy of serious consideration."

The Supreme Court of Minnesota did not agree with us as to the legal effect of the Statute and said (p. 321, 322):

> "Defendant also insists that, although chapter 416 provides the same method for determining the value of the shares of national banks and the value of the money capital of State Banks, it discriminates in favor of State Banks. This claim is based on the fact that in the case of State Banks, the tax is against the bank, not against the shareholders, and the bank is permitted to deduct its tax exempt securities from the value of its property in fixing the amount subject to taxation, while in the case of national banks the tax is against the shareholders, not against the bank, and tax-exempt securities are not deducted in fixing the value of such shares. We think that the method adopted is permissible under the doctrine of *People vs. Commissioners of Taxes*, 71 *U. S.* (4 *Wall*) 244, 18 *L. Ed.*, 344; *Mercantile Nat. Bank vs. Mayor, etc.*, 121 *U. S.*, 138, 30 *L. Ed.*, 895; and *Des Moines Nat. Bank vs. Fairweather*, 263 *U. S.* 103, 68 *L. Ed.*, 191."

It is submitted that the judgment should be affirmed if for no other reason than that this plain discrimination between shares of state and national banks rendered the statute invalid.

CONCLUSION

We are not competent, nor would we presume, to compare these actions with any other undecided case now before this Court. We feel, however, that the situation in Minnesota, caused, as we have shown, by a mass of unre-

lated and hodge-podge statutes enacted at various times since 1906, is unique, and that under any, and all, of the decisions the judgment here must be affirmed.

The situation is unique because the laws of Minnesota seem to produce and result in every form of discrimination against national banks which has ever been condemned.

We regret the length of this brief, but have felt that because of the issuance of the Writ of Cretiorari proper respect for this court required from us as complete an analysis of the facts and of the statutes of Minnesota as it was within our ability to present.

It is respectfully submitted the Writ should be dismissed, or in any event the judgment should be affirmed.

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EDWARD S. STRINGER,
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APPENDIX A

Chapter 416, Laws of 1921.

An act providing for the assessment and taxation of the shares of stock of banks organized under the laws of the United States and the moneyed capital of banks and mortgage loan companies organized under the laws of this State, and repealing Sections 2017 and 2020, General Statutes of 1913, and other acts inconsistent herewith.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. ASSESSMENT OF BANK STOCK.—The shares of stock of every bank in this State organized under the laws of the United States and the moneyed capital of every bank or mortgage loan company organized under the laws of this State shall be assessed and taxed at forty (40) per cent of the true and full value thereof in the city, village, town or district where such bank or mortgage loan company is located.

Sec. 2. ASSESSED AND TAXED AGAINST HOLDERS OF RECORD IN NAME OF BANK—TAX PAID BY BANK.—The shares of stock of banks organized under the laws of the United States shall be assessed and taxed against the holders thereof, but in the name of the bank, and the taxes levied thereon shall be paid by such bank as agent of the stockholders, regardless of where such stockholders may reside. The moneyed capital of every bank and mortgage loan company organized under the laws of this State shall be assessed and taxed against such bank or mortgage loan company, and the taxes levied thereon shall be paid by such bank or mortgage loan company.

Sec. 3. OFFICERS TO MAKE STATEMENT FOR ASSESSORS.—To aid the assessor in determining the value of the shares of stock of national banks and the value of

the moneyed capital of state banks and mortgage loan companies, the cashier or other accounting officer of every such bank or mortgage loan company shall furnish a sworn statement to the assessor, showing the amount and number of shares of the capital stock, the amount of its surplus, undivided profits and all other funds, and the amount of its legally authorized investments in real estate located in this State, which real estate shall be assessed and taxed in the same manner as other real estate. The assessor shall deduct the amount of such legally authorized investments in real estate from the aggregate amount of such capital, surplus, undivided profits, and other funds, and the remainder shall be taken as a basis for determining the taxable value of the shares of stock of banks organized under the laws of the United States and of the moneyed capital of banks and mortgage loan companies organized under the laws of this State.

Sec. 4. TAX DEDUCTED FROM DIVIDENDS.—To secure the payment of taxes levied against the stockholders of banks organized under the laws of the United States every such bank shall, before declaring any dividend, deduct from the annual earnings of the bank such amount as may be necessary to pay any such taxes so levied against such stockholders, and such bank or the officers thereof shall pay the taxes and shall be authorized to charge the amount thereof to the expense account of such bank.

Sec. 5.—INCONSISTENT ACTS REPEALED.—Sections 2017 and 2020, General Statutes of 1913, and all other acts or parts of acts, in so far as they are inconsistent herewith, are hereby repealed. But such repeal shall not affect the validity of any taxes levied or assessed by virtue of said sections and all such taxes shall be paid and proceedings for payment taken according to the provisions of said

sections and other laws in force at the time of the assessment and levy thereof.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved April 21, 1921.

APPENDIX B

Chapter 328, Laws 1907.

CHAPTER 328—H. F. No. 561.

An Act to provide for the taxation of mortgages of real property.

Be it enacted by the Legislature of the State of Minnesota:

MORTGAGE DEFINED.—Section 1. The words "real property," "real estate" and "land," as used in this act, in addition to the definitions thereof contained in the Revised Laws of 1905, shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws; and the words "mortgage," as so used, shall mean any instrument creating or evidencing a lien of any kind on such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price. No instrument relating to real estate shall be valid as security for any debt, unless the fact that it is so intended and the amount of such debt are expressed therein. But a mortgage given to correct a misdescription of the mortgaged property, or to include additional security for the same indebtedness, shall not be subject to the tax imposed by this act; nor shall a mortgage securing the same and other indebtedness, additional to that upon which such tax has been paid, be taxable hereunder, except for such added sum.

REGISTRY TAX 50 CENTS FOR $100.—Sec. 2. A tax of fifty cents is hereby imposed upon each hundred dollars, or major fraction thereof, of the principal debt or obligation which is, or in any contingency may be, secured

by any mortgage of real property situate within the state which mortgage is recorded or registered on or after April 30, 1907, provided, that if any such mortgage shall describe any real estate situate outside of this state, such tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the real estate therein described situate in this state bears to the value of the whole of the real estate described therein, as such value shall be determined by the state auditor upon application of the mortgagee.

IN LIEU OF ALL OTHER TAXES.—Sec. 3. All mortgages upon which such tax has been paid, with the debts or obligations secured thereby and the papers evidencing the same, shall be exempt from all other taxes; but nothing herein shall exempt such property from the operation of the laws relating to the taxation of gifts and inheritances, or those governing the taxation of banks, savings banks, or trust companies; provided, that this act shall not apply to mortgages taken in good faith by persons or corporations whose personal property is expressly exempted from taxation by law, or is taxed upon the basis of gross earnings, or other methods of commutation in lieu of all other taxes.

MORTGAGES IN TRUST.—Sec. 4. If a mortgage is made to a mortgagee in trust, to secure the payment of bonds or other obligations to be issued thereafter, a statement may be incorporated therein of the amount of such obligations already issued or to be issued forthwith, and the tax to be paid on filing such mortgage for record or registration shall be computed upon the amount so stated. Such statement shall be binding and conclusive upon all persons claiming through or under the mortgage, and no such obligation issued in excess of the aggregate so fixed shall be valid for any purpose unless the additional tax

thereon be paid and the receipt of the proper county treasurer therefor be endorsed thereon.

REGISTRY TAX—HOW PAID.—Sec. 5. The tax imposed by this act shall be paid to the treasurer of the county in which the mortgaged land or some part thereof is situated, at or before the time of filing the mortgage for record or registration. The treasurer shall endorse his receipt on the mortgage, countersigned by the county auditor, who shall charge the amount to the treasurer, and such receipt shall be recorded with the mortgage, and such receipt of the record thereof shall be conclusive proof that the tax has been paid to the amount therein stated, and shall authorize any register of deeds to record the mortgage. Its form in substance shall be "registration tax hereon of..... .....dollars paid." If the mortgages be exempt from taxation the endorsement shall be "exempt from registration tax," to be signed in either case by the treasurer as such, and in case of payment to be countersigned by the auditor. In case the treasurer shall be unable to determine whether a claim of exemption should be allowed the tax shall be paid to the clerk of the district court of the county to abide the order of such court made upon motion of the county attorney, or of the claimant upon notice as required by the court. When any such mortgage covers real property situate in more than one county in this state the whole of such tax shall be paid to the county treasurer of the county where the mortgage is first presented for record or registration, and the payment shall be receipted and countersigned as above provided, and such tax shall be divided and paid over by the county treasurer receiving the same on or before the tenth day of each month after receipt thereof to the county or counties entitled thereto in the ratio which the assessed value of the real property covered by the mortgage in each county bears to

the assessed value of all the property described in the mortgage. In making such division and payment the county treasurer shall send therewith a statement giving the description of the property described in the mortgage and the assessed value of the part thereof situate in each county. And for the purpose aforesaid the county treasurer of any county may require the county treasurer of any other county to certify to him the assessed valuation of any tract of land in any such mortgage.

PAID TO STATE TREASURER UNDER CERTAIN CONDITIONS.—Sec. 6. When any real estate situate in this state and described in any such mortgage is not taxed by direct tax upon the assessed valuation thereof, then the tax herein provided shall be paid to the state treasurer and credited to the general revenue fund. The receipt thereof shall be endorsed upon the mortgage by the state treasurer and countersigned by the state auditor, who shall charge the treasurer therewith, and thereupon such mortgage shall be recorded or registered, as to such real estate in any office in this state, and thereupon such mortgage may be recorded or registered, but as to all real property described in any mortgage taxed upon an assessed valuation the registry tax shall be paid as provided in section 5 hereof.

NOT RECORDED UNTIL TAX IS PAID.—Sec. 7. No such mortgage, no papers relating to its foreclosure, nor any assignment or satisfaction thereof shall be recorded or registered after April 30, 1907, unless said tax shall have been paid; nor shall any such document, or any record thereof, be received in evidence in any court, or have any validity as notice or otherwise.

MORTGAGES — PROVISION. — Sec. 8. All mortgages of real estate recorded or registered prior to April 30th, 1907, shall be taxable as provided by law under the

provisions of law relating thereto prior to the enactment hereof, provided, that the holder of any such mortgage may pay to the treasurer of the proper county or the state treasurer, or both, the tax herein prescribed upon the amount of the debt secured by such mortgage at the time of such payment, as stated by the affidavit of the owner of such mortgage, to be filed with the county treasurer, and have the treasurer's receipt countersigned by the auditor endorsed thereon. The register of deeds or secretary of state, as the case may be, on presentation of such receipt, shall note on the margin of the mortgage record the date and amount of such payment. Thereafter such mortgage debt shall not be otherwise taxable.

TAX—HOW DISTRIBUTED.—Sec. 9. All taxes paid to the county treasurer under the provisions of this act shall be apportioned and distributed in the same manner as real estate taxes paid upon the real estate described in the mortgage.

Sec. 10. This act shall take effect and be in force from and after April 30th, 1907.

Approved April 23, 1907.

IX

APPENDIX C

Chapter 163, Laws of 1913.

An Act to amend Sections Two (2), Seven (7) and Eight (8) of Chapter Three Hundred Twenty-eight (328) of the Laws of 1907, entitled "An Act to provide for the taxation of mortgages of real property."

Be it enacted by the Legislature of the State of Minnesota:

Section 1. REGISTRY TAX OF 15 CENTS PER $100 WHERE MORTGAGE RUNS FOR FIVE YEARS OR LESS, and 25 CENTS FOR MORE THAN FIVE YEARS.—Section two of Chapter three hundred twenty-eight (328) of the Laws of 1907 is hereby amended to read as follows:

Section 2. A tax of fifteen cents is hereby imposed upon each hundred dollars, or fraction thereof, of the principal debt or obligation which is, or in any contingency may be, secured by any mortgage of real property situate within the state executed and delivered after the passage and approval hereof and recorded or registered hereafter; provided that any such mortgage heretofore executed and delivered shall not be recorded or registered without payment of the tax originally stipulated in Section two (2) hereof as originally enacted; provided further that if any such mortgage shall describe any real estate situate outside of this state, such tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the real estate therein described situate in this state bears to the value of the whole of the real estate described therein, as such value shall be determined by the state auditor upon application of the mortgagee; and provided further that if the maturity of the said debt secured by the said mortgage, as therein stipulated, shall be fixed at a date more than five years after the date of said mortgage, then and in that case,

the tax to be paid thereon shall be at the rate of twenty-five cents on each hundred dollars or fraction thereof.

Sec. 2. EFFECT IMMEDIATELY.—Section seven (7) of Chapter three hundred twenty-eight (328) is hereby amended to read as follows:

Section 7. No such mortgage, no papers relating to its foreclosure nor any assignment or satisfaction thereof shall be recorded or registered after the passage of this act unless said tax shall have been paid; nor shall any such document or any record thereof, be received in evidence, in any court, or have any validity as notice or otherwise.

Sec. 3. PRIOR MORTGAGES MAY BE TAXED UNDER PRESENT ACT.—That Section eight (8) of Chapter three hundred twenty-eight (328) is hereby amended to read as follows:

Section 8. All mortgages of real estate recorded or registered prior to the passage of this act shall be taxable as provided by law under the provisions of law relating thereto prior to the enactment hereof, provided, that the holder of any such mortgage may pay to the treasurer of the proper county, or the state treasurer, or both the tax therein prescribed upon the amount of the debt secured by such mortgage at the time of such payment as stated by the affidavit of the owner of such mortgage to be filed with the county treasurer, and have the treasurer's receipt countersigned by the auditor endorsed thereon. The register of deeds or secretary of state, as the case may be, on presentation of such receipt, shall note on the margin of the mortgage record the date and amount of such payment. Thereafter such mortgage debt shall not be otherwise taxable.

Sec. 4. This act shall take effect and be in force from and after its passage.

Approved April 2, 1913.

APPENDIX D

Section 1, Chapter 285, Laws 1911.

Section 2316, General Statutes 1913.

DEFINITION—TAX RATE—"Money" and "credits" as the same are defined in section 798 "Revised Laws of 1905" (1975) are hereby exempted from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof.

But nothing in this act shall apply to money or credits belonging to incorporated bank situated in this state, nor to any indebtedness on which tax is paid under chapter 328, General Laws of 1907.

Section 798, Revised Laws 1905.

Section 1975, General Statutes 1913.

1. "Money" or "moneys" shall mean gold and silver coin, treasury notes, bank notes and other forms of currency in common use, and every deposit which any person owning the same, or holding in trust and residing in this state, is entitled to withdraw in money on demand.

2. "Credits" shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

(Balance of Section omitted as immaterial).

APPENDIX E

Chapter 529, Laws of 1913.

An Act to provide for the taxation of trust companies.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. FIVE PER CENT TAX ON GROSS EARNINGS OF TRUST COMPANIES.—On or before March 1 of each year every trust company organized under the laws of this state shall pay into the county treasury of the county where its principal place of business is located five (5) per cent of its gross earnings for the preceding calendar year, which amount shall be in lieu of all taxes and assessments upon the capital stock and the personal property of such trust company; provided, however, that if any such company shall receive deposits subject to check other than trust deposits, that then such company shall be assessed in the same manner as incorporated banks are assessed, and shall pay taxes in the same manner as such banks.

Sec. 2. All taxes paid to county treasuries under the provisions of this act shall be apportioned and distributed in the same manner as the general property tax is apportioned and distributed.

Approved April 25, 1913.

APPENDIX F

Chapter 483, Laws of 1913.

An Act to classify property for taxation purposes and to fix the per cent of "full and true value" at which property in each class shall be assessed.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. CLASSIFICATION OF REAL AND PERSONAL PROPERTY FOR TAXATION PURPOSES.—All real and personal property subject to a general property tax and not subject to any gross earnings or other lieu tax is hereby classified for purposes of taxation as follows:

Class 1. Iron ore whether mined or unmined shall constitute class one (1) and shall be valued and assessed at fifty (50) per cent of its true and full value. If unmined it shall be assessed with and as a part of the real estate in which it is located, but at the rate aforesaid. The real estate in which iron ore is located, other than the ore, shall be classified and assessed in accordance with the provisions of classes three (3) and four (4) as the case may be. In assessing any tract or lot of real estate in which iron ore is known to exist the assessable value of the ore exclusive of the land in which it is located, and the assessable value of the land exclusive of the ore shall be determined and set down separately and the aggregate of the two shall be assessed against the tract or lot.

Class 2. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence, shall constitute class two (2) and shall be valued and assessed at twenty-five (25) per cent of the full and true value thereof.

Class 3. Live stock, poultry, all agricultural products, stocks of merchandise of all sorts together with the furniture and fixtures used therewith, manufacturers' materials and manufactured articles, all tools, implement and machinery whether fixtures or otherwise, and all unplatted real estate, except as provided by class one (1) hereof, shall constitute class three (3) and shall be valued and assessed at thirty-three and one-third (33-1/3) per cent of the true and full value thereof.

Class 4. All property not included in the three preceding classes shall constitute class four (4) and shall be valued and assessed at forty (40) per cent of the full and true value thereof.

Sec. 2. All acts and parts of acts inconsistent herewith are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after January 1st, 1914.

Approved April 24, 1913.

APPENDIX G

Section 838, Revised Laws 1905.
Section 2015, General Statutes 1913.

838. CORPORATIONS, COMPANIES, and ASSOCIATIONS GENERALLY—The President, Secretary, or principal accounting officer of every company and association, incorporated or unincorporated, except railroad, insurance, telegraph, telephone, express, freight line, and sleeping car companies, and banking corporations whose taxation is specifically provided for in this chapter, when listing personal property, shall also make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

1. The name and location of the company or association.

2. The amount of capital stock authorized, and the number of shares into which it is divided.

3. The amount of capital stock paid up.

4. The market value, or, if they have no market value, then the actual value, of the shares of stock.

5. The value of its real property, if any.

6. The value of its personal property.

7. The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

The aggregate amount of the fifth and sixth items, shall be deducted from the total amount of the fourth item, and the remainder, if any, shall be listed as "bonds or stocks," under Sec. 835, subd. 23. The real and personal property of each company or association shall be listed and assessed the same as that of private persons. If the proper officer shall fail or refuse to make such statement, the assessor shall make such statement from the best information he can obtain. Mortgages of building associations, which are represented in their stock and assessed as stock, shall not be assessed as mortgages. They shall list their real estate and all personal property as provided in this section. (1530).

APPENDIX H

Section 839, Revised Laws 1905.

Section 2016, General Statutes 1913.

839. PRIVATE BANKERS, BROKERS, and BANKS WITHOUT STOCK—The accounting officer of every bank whose capital is not represented by shares of stock, and every private banker, broker, and stockjobber, when listing personal property, shall also make out and deliver to the assessor a sworn statement showing:

1. The amount of money on hand or in transit.

2. The amount of funds in the hands of other banks, brokers, or others subject to draft.

3. The amount of checks or cash items not included in either of the preceding items.

4. The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.

5. The amount of bonds and stock of every kind (except United States bonds), and shares of capital stock of joint stock or other companies or corporations held as an investment, or in any way representing assets.

6. All other property appertaining to said business, other than real estate, which shall be listed and assessed as other real estate under this chapter.

7. The amount of all deposits made with them by other persons.

8. The amount of all accounts payable, other than current deposit accounts.

The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third and fourth items, and the remainder, if any, shall be listed as money, under Sec. 835, subd. 19. The

amount of the fifth item shall be listed as bonds and stock under said section, and the sixth item shall be listed the same as other similar personal property is listed under this chapter, except, that, in case of savings banks organized under the general laws of this state, the amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third, fourth, fifth and sixth items, and the remainder, if any, shall be listed as credits, according to the provisions of Sec. 835. (1531).